

Attachment 1

EXHIBIT 1

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

IN THE MATTER OF THE SEARCH OF
THE FORENSIC COPY OF THE CELL
PHONE OF REPRESENTATIVE SCOTT
PERRY

Case No. 22-sc-2144

Chief Judge Beryl A. Howell

UNDER SEAL

ORDER

Upon consideration of Representative Perry's motion for non-disclosure to the government; the government's objections to Representative Perry's assertions of privilege; Representative Perry's *ex parte* supplement; the attached exhibits; and the underlying record, for the reasons set forth in the accompanying Memorandum Opinion, it is hereby:

ORDERED that Representative Perry's Motion for Non-Disclosure, ECF No. 21, is **GRANTED IN PART** and **DENIED IN PART**; it is further

ORDERED that Representative Perry may withhold the 161 responsive records listed by Bates-stamp number in **Attachment A** to this Order and not disclose these records to the government because they are protected under the Speech or Debate Clause of the U.S. Constitution, *see* U.S. CONST. art. I, § 6, cl. 1; it is further

ORDERED that Representative Perry may withhold in part and must disclose in part the responsive records with Bates-stamp numbers RELM0000001915; RELM0000003823; RELM0000003896, in the redacted form attached in **Attachment B** to this Order; it is further

ORDERED that Representative Perry must promptly disclose, by January 5, 2023, to the government all remaining responsive records previously withheld and submitted for *in camera* review, listed by Bates-stamp number in **Attachment C** to this Order; and it is further

ORDERED that the Clerk of the Court is directed to close this case.

SO ORDERED.

Date: December 28, 2022



A handwritten signature in cursive script that reads "Beryl A. Howell".

BERYL A. HOWELL
Chief Judge

ATTACHMENT A:

**RESPONSIVE RECORDS THAT MAY NOT BE DISCLOSED
TO THE GOVERNMENT**

Bates Number			
REL0000000104	RELM00000000775	RELM00000002227	RELM00000004187
REL0000000145	RELM00000000798	RELM00000002262	RELM00000004208
REL0000000438	RELM00000000820	RELM00000002343	RELM00000004335
REL0000000477	RELM00000000824	RELM00000002361	RELM00000004375
REL0000000859	RELM00000000877	RELM00000002441	RELM00000004381
REL0000000995	RELM00000000920	RELM00000002448	RELM00000004409
REL0000001158	RELM00000000922	RELM00000002487	RELM00000004447
REL0000001320	RELM00000000941	RELM00000002566	RELM00000004447.000 1
REL0000001503	RELM00000000955	RELM00000002659	RELM00000004447.000 2
REL0000001521	RELM00000001025	RELM00000002806	RELM00000004461
REL0000001623	RELM00000001139	RELM00000002855	RELM00000004595
REL0000001703	RELM00000001206	RELM00000002861	RELM00000004596
REL0000001981	RELM00000001271	RELM00000002886	RELM00000004871
REL0000002170	RELM00000001331	RELM00000002893	RELM00000004926
REL0000002255	RELM00000001331.000 1	RELM00000002896	RELM00000004936

REL0000002700	RELM0000001350	RELM0000002928	RELM0000004948
REL0000002833	RELM0000001407	RELM0000002941	RELM0000005007
REL0000002838	RELM0000001408	RELM0000002971	RELM0000005040
REL0000002870	RELM0000001419	RELM0000003010	RELM0000005137
REL0000002911	RELM0000001448	RELM0000003187	RELM0000005139
REL0000004520	RELM0000001466	RELM0000003212	RELM0000005166
REL0000004664	RELM0000001565	RELM0000003217	RELM0000005242
REL0000004759	RELM0000001590	RELM0000003224	RELM0000005242.000 1
REL0000004790	RELM0000001614	RELM0000003281	RELM0000005242.000 2
REL0000004799	RELM0000001648	RELM0000003311	RELM0000005242.000 3
RELM0000000018	RELM0000001689	RELM0000003371	RELM0000005242.000 4
RELM0000000100	RELM0000001694	RELM0000003422	RELM0000005242.000 5
RELM0000000100.000 1	RELM0000001702	RELM0000003501	RELM0000005242.000 6
RELM0000000100.000 2	RELM0000001785	RELM0000003576	RELM0000005242.000 7
RELM0000000123	RELM0000001804	RELM0000003648	RELM0000005242.000 8
RELM0000000299	RELM0000001847	RELM0000003707	RELM0000005255
RELM0000000346	RELM0000001860	RELM0000003870	RELM0000005456
RELM0000000378	RELM0000001933	RELM0000003896.000 1	RELM0000005560
RELM0000000426	RELM0000001962	RELM0000003896.000 2	RELM0000005604

RELM0000000495	RELM0000001996	RELM0000003896.000 3	RELM0000005636
RELM0000000562	RELM0000002009	RELM0000003896.000 4	RELM0000005680
RELM0000000583	RELM0000002077	RELM0000004064	RELM0000005703
RELM0000000595	RELM0000002101	RELM0000004077	RELM0000005713
RELM0000000610	RELM0000002193	RELM0000004140	
RELM0000000634	RELM0000002193.000 1	RELM0000004142	
RELM0000000722	RELM0000002193.000 2	RELM0000004167	

ATTACHMENT B:

**RESONSIVE RECORDS THAT MAY BE DISCLOSED TO
THE GOVERNMENT AS REDACTED BELOW**

Bates Number
RELM0000001915
RELM0000003823
RELM0000003896

Short Message Report

Conversations: 1
Total Messages: 7

Participants: 2
Date Range: 12/3/2020

Outline of Conversations



[REDACTED] 7 messages on 12/3/2020 Patrick Schilling Scott Perry

Messages in chronological order (times are shown in GMT -05:00)



[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Short Message Report

Conversations: 1
Total Messages: 11

Participants: 2
Date Range: 12/16/2020 - 12/17/2020

Outline of Conversations



Scott Perry

11 messages between 12/16/2020 - 12/17/2020 Patrick Schilling

Messages in chronological order (times are shown in GMT -05:00)



[REDACTED]

[REDACTED]

[REDACTED]

Short Message Report

Conversations: 1
Total Messages: 6

Participants: 2
Date Range: 1/6/2021 - 1/7/2021

Outline of Conversations



Scott Perry

6 messages between 1/6/2021 - 1/7/2021 Patrick Schilling

Messages in chronological order (times are shown in GMT -05:00)



[Redacted]

[Redacted]

[Redacted]

[Redacted]



**Thread
reader**

Thread reader



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THREAD BY KANEKOA (@KANEKOATHEGREAT)

NEW: US election data was forwarded from Frankfurt, Germany to Rome, Italy where the man pictured below partnered with members of MI6, the CIA, & the Italian defense-contractor, Leonardo, led the operation & built the algorithms that were used ...



Read all 8 tweets on threadreaderapp.com







ATTACHMENT C:**RESPONSIVE RECORDS THAT MAY BE DISCLOSED IN THEIR ENTIRETY
TO THE GOVERNMENT**

Bates Number				
RELM00000004 43	RELM00000003 09.0002	RELM00000023 54.0067	RELM00000030 18.0001	RELM0000003473.0 022
RELM00000010 79	RELM00000003 10	RELM00000023 54.0068	RELM00000030 18.0002	RELM0000003473.0 023
RELM00000010 89	RELM00000003 10.0001	RELM00000023 54.0069	RELM00000030 27	RELM0000003473.0 024
REL0000000023	RELM00000003 10.0002	RELM00000023 54.0070	RELM00000030 27.0001	RELM0000003473.0 025
REL0000000024	RELM00000003 10.0003	RELM00000023 54.0071	RELM00000030 27.0002	RELM0000003473.0 026
REL0000000024. 0001	RELM00000003 10.0004	RELM00000023 54.0072	RELM00000030 27.0003	RELM0000003473.0 027
REL0000000032	RELM00000003 10.0005	RELM00000023 54.0073	RELM00000030 27.0004	RELM0000003473.0 028
REL0000000051	RELM00000003 12	RELM00000023 54.0074	RELM00000030 27.0005	RELM0000003473.0 029
REL0000000058	RELM00000003 27	RELM00000023 54.0075	RELM00000030 27.0006	RELM0000003473.0 030
REL0000000059	RELM00000003 33	RELM00000023 54.0076	RELM00000030 27.0007	RELM0000003473.0 031
REL0000000064	RELM00000003 35	RELM00000023 54.0077	RELM00000030 27.0008	RELM0000003473.0 032
REL0000000077	RELM00000003 35.0001	RELM00000023 54.0078	RELM00000030 27.0009	RELM0000003473.0 033

REL0000000102	RELM00000003 35.0002	RELM00000023 54.0079	RELM00000030 27.0010	RELM0000003473.0 034
REL0000000115	RELM00000003 53	RELM00000023 54.0080	RELM00000030 27.0011	RELM0000003473.0 035
REL0000000115. 0001	RELM00000003 53.0001	RELM00000023 54.0081	RELM00000030 27.0012	RELM0000003473.0 036
REL0000000123	RELM00000003 73	RELM00000023 54.0082	RELM00000030 27.0013	RELM0000003473.0 037
REL0000000181	RELM00000003 73.0001	RELM00000023 54.0083	RELM00000030 27.0014	RELM0000003473.0 038
REL0000000207	RELM00000003 76	RELM00000023 54.0084	RELM00000030 27.0015	RELM0000003473.0 039
REL0000000209	RELM00000003 88	RELM00000023 54.0085	RELM00000030 27.0016	RELM0000003473.0 040
REL0000000231	RELM00000003 91	RELM00000023 54.0086	RELM00000030 27.0017	RELM0000003473.0 041
REL0000000245	RELM00000004 14	RELM00000023 54.0087	RELM00000030 27.0018	RELM0000003473.0 042
REL0000000277	RELM00000004 23	RELM00000023 54.0088	RELM00000030 27.0019	RELM0000003478
REL0000000284	RELM00000004 31	RELM00000023 54.0089	RELM00000030 27.0020	RELM0000003481
REL0000000343	RELM00000004 39	RELM00000023 54.0090	RELM00000030 27.0021	RELM0000003481.0 001
REL0000000379	RELM00000004 58	RELM00000023 54.0091	RELM00000030 27.0022	RELM0000003481.0 002
REL0000000383	RELM00000004 58.0001	RELM00000023 54.0092	RELM00000030 27.0023	RELM0000003481.0 003
REL0000000385	RELM00000004 58.0002	RELM00000023 54.0093	RELM00000030 27.0024	RELM0000003481.0 004

REL0000000389	RELM00000004 58.0003	RELM00000023 54.0094	RELM00000030 27.0025	RELM0000003481.0 005
REL0000000425	RELM00000004 61	RELM00000023 54.0095	RELM00000030 27.0026	RELM0000003498
REL0000000436	RELM00000004 70	RELM00000023 54.0096	RELM00000030 27.0027	RELM0000003500
REL0000000436. 0001	RELM00000004 70.0001	RELM00000023 54.0097	RELM00000030 27.0028	RELM0000003500.0 001
REL0000000440	RELM00000004 70.0002	RELM00000023 54.0098	RELM00000030 27.0029	RELM0000003504
REL0000000451	RELM00000004 92	RELM00000023 54.0099	RELM00000030 27.0030	RELM0000003509
REL0000000460	RELM00000005 08	RELM00000023 54.0100	RELM00000030 27.0031	RELM0000003509.0 001
REL0000000474	RELM00000005 08.0001	RELM00000023 54.0101	RELM00000030 27.0032	RELM0000003510
REL0000000476	RELM00000005 08.0002	RELM00000023 54.0102	RELM00000030 27.0033	RELM0000003538
REL0000000479	RELM00000005 11	RELM00000023 54.0103	RELM00000030 27.0034	RELM0000003567
REL0000000485	RELM00000005 11.0001	RELM00000023 54.0104	RELM00000030 27.0035	RELM0000003567.0 001
REL0000000510	RELM00000005 18	RELM00000023 54.0105	RELM00000030 27.0036	RELM0000003567.0 002
REL0000000518	RELM00000005 23	RELM00000023 54.0106	RELM00000030 27.0037	RELM0000003567.0 003
REL0000000522	RELM00000005 23.0001	RELM00000023 54.0107	RELM00000030 27.0038	RELM0000003567.0 004
REL0000000533	RELM00000005 27	RELM00000023 54.0108	RELM00000030 27.0039	RELM0000003567.0 005

REL0000000547	RELM00000005 35	RELM00000023 54.0109	RELM00000030 27.0040	RELM0000003567.0 006
REL0000000553	RELM00000005 37	RELM00000023 54.0110	RELM00000030 27.0041	RELM0000003567.0 007
REL0000000554	RELM00000005 50	RELM00000023 54.0111	RELM00000030 27.0042	RELM0000003567.0 008
REL0000000564	RELM00000005 50.0001	RELM00000023 54.0112	RELM00000030 27.0043	RELM0000003567.0 009
REL0000000640	RELM00000005 56	RELM00000023 54.0113	RELM00000030 27.0044	RELM0000003567.0 010
REL0000000671	RELM00000005 60	RELM00000023 54.0114	RELM00000030 27.0045	RELM0000003567.0 011
REL0000000675	RELM00000005 93	RELM00000023 54.0115	RELM00000030 27.0046	RELM0000003567.0 012
REL0000000676	RELM00000006 00	RELM00000023 54.0116	RELM00000030 27.0047	RELM0000003567.0 013
REL0000000690	RELM00000006 08	RELM00000023 54.0117	RELM00000030 27.0048	RELM0000003567.0 014
REL0000000692	RELM00000006 08.0001	RELM00000023 54.0118	RELM00000030 27.0049	RELM0000003567.0 015
REL0000000745	RELM00000006 14	RELM00000023 54.0119	RELM00000030 27.0050	RELM0000003567.0 016
REL0000000768	RELM00000006 35	RELM00000023 54.0120	RELM00000030 27.0051	RELM0000003567.0 017
REL0000000768. 0001	RELM00000006 41	RELM00000023 54.0121	RELM00000030 27.0052	RELM0000003567.0 018
REL0000000805	RELM00000006 46	RELM00000023 54.0122	RELM00000030 27.0053	RELM0000003567.0 019
REL0000000830	RELM00000006 46.0001	RELM00000023 54.0123	RELM00000030 27.0054	RELM0000003567.0 020

REL0000000838	RELM00000006 46.0002	RELM00000023 54.0124	RELM00000030 27.0055	RELM0000003567.0 021
REL0000000851	RELM00000006 46.0003	RELM00000023 54.0125	RELM00000030 27.0056	RELM0000003567.0 022
REL0000000852	RELM00000006 46.0004	RELM00000023 58	RELM00000030 27.0057	RELM0000003567.0 023
REL0000000869	RELM00000006 46.0005	RELM00000023 58.0001	RELM00000030 27.0058	RELM0000003567.0 024
REL0000000870	RELM00000006 46.0006	RELM00000023 65	RELM00000030 27.0059	RELM0000003567.0 025
REL0000000891	RELM00000006 48	RELM00000023 73	RELM00000030 27.0060	RELM0000003567.0 026
REL0000000932	RELM00000006 63	RELM00000023 73.0001	RELM00000030 27.0061	RELM0000003567.0 027
REL0000000937	RELM00000006 65	RELM00000023 73.0002	RELM00000030 27.0062	RELM0000003567.0 028
REL0000000994	RELM00000006 68	RELM00000023 73.0003	RELM00000030 27.0063	RELM0000003567.0 029
REL0000001001	RELM00000006 72	RELM00000023 73.0004	RELM00000030 27.0064	RELM0000003567.0 030
REL0000001009	RELM00000006 76	RELM00000023 73.0005	RELM00000030 27.0065	RELM0000003567.0 031
REL0000001023	RELM00000006 76.0001	RELM00000023 73.0006	RELM00000030 27.0066	RELM0000003567.0 032
REL0000001034	RELM00000006 76.0002	RELM00000023 73.0007	RELM00000030 27.0067	RELM0000003567.0 033
REL0000001042	RELM00000006 76.0003	RELM00000023 73.0008	RELM00000030 27.0068	RELM0000003567.0 034
REL0000001056	RELM00000006 76.0004	RELM00000023 73.0009	RELM00000030 27.0069	RELM0000003567.0 035

REL0000001058	RELM00000006 76.0005	RELM00000023 73.0010	RELM00000030 27.0070	RELM0000003567.0 036
REL0000001062	RELM00000006 76.0006	RELM00000023 73.0011	RELM00000030 27.0071	RELM0000003567.0 037
REL0000001078	RELM00000006 90	RELM00000023 73.0012	RELM00000030 27.0072	RELM0000003567.0 038
REL0000001079	RELM00000006 90.0001	RELM00000023 73.0013	RELM00000030 27.0073	RELM0000003567.0 039
REL0000001110	RELM00000007 07	RELM00000023 73.0014	RELM00000030 27.0074	RELM0000003567.0 040
REL0000001154	RELM00000007 19	RELM00000023 73.0015	RELM00000030 27.0075	RELM0000003567.0 041
REL0000001179	RELM00000007 21	RELM00000023 73.0016	RELM00000030 27.0076	RELM0000003567.0 042
REL0000001190	RELM00000007 21.0001	RELM00000023 73.0017	RELM00000030 27.0077	RELM0000003567.0 043
REL0000001214	RELM00000007 21.0002	RELM00000023 73.0018	RELM00000030 27.0078	RELM0000003567.0 044
REL0000001243	RELM00000007 21.0003	RELM00000023 73.0019	RELM00000030 27.0079	RELM0000003567.0 045
REL0000001259	RELM00000007 28	RELM00000023 73.0020	RELM00000030 27.0080	RELM0000003567.0 046
REL0000001301	RELM00000007 32	RELM00000023 73.0021	RELM00000030 27.0081	RELM0000003567.0 047
REL0000001307	RELM00000007 32.0001	RELM00000023 73.0022	RELM00000030 27.0082	RELM0000003567.0 048
REL0000001312	RELM00000007 59	RELM00000023 73.0023	RELM00000030 27.0083	RELM0000003567.0 049
REL0000001324	RELM00000007 82	RELM00000023 73.0024	RELM00000030 27.0084	RELM0000003567.0 050

REL0000001327	RELM00000007 87	RELM00000023 73.0025	RELM00000030 27.0085	RELM0000003567.0 051
REL0000001356	RELM00000007 90	RELM00000023 73.0026	RELM00000030 27.0086	RELM0000003567.0 052
REL0000001365	RELM00000008 00	RELM00000023 73.0027	RELM00000030 27.0087	RELM0000003567.0 053
REL0000001374	RELM00000008 00.0001	RELM00000023 73.0028	RELM00000030 27.0088	RELM0000003567.0 054
REL0000001376	RELM00000008 05	RELM00000023 73.0029	RELM00000030 27.0089	RELM0000003567.0 055
REL0000001395	RELM00000008 05.0001	RELM00000023 73.0030	RELM00000030 27.0090	RELM0000003567.0 056
REL0000001397	RELM00000008 05.0002	RELM00000023 73.0031	RELM00000030 27.0091	RELM0000003567.0 057
REL0000001401	RELM00000008 17	RELM00000023 73.0032	RELM00000030 27.0092	RELM0000003567.0 058
REL0000001429	RELM00000008 17.0001	RELM00000023 73.0033	RELM00000030 27.0093	RELM0000003567.0 059
REL0000001444	RELM00000008 39	RELM00000023 73.0034	RELM00000030 27.0094	RELM0000003567.0 060
REL0000001453	RELM00000008 39.0001	RELM00000023 73.0035	RELM00000030 27.0095	RELM0000003567.0 061
REL0000001483	RELM00000008 57	RELM00000023 73.0036	RELM00000030 27.0096	RELM0000003567.0 062
REL0000001493	RELM00000008 67	RELM00000023 73.0037	RELM00000030 44	RELM0000003567.0 063
REL0000001511	RELM00000008 93	RELM00000023 73.0038	RELM00000030 65	RELM0000003567.0 064
REL0000001531	RELM00000009 02	RELM00000023 73.0039	RELM00000030 65.0001	RELM0000003567.0 065

REL0000001555	RELM00000009 02.0001	RELM00000023 73.0040	RELM00000030 65.0002	RELM0000003567.0 066
REL0000001558	RELM00000009 13	RELM00000023 73.0041	RELM00000030 65.0003	RELM0000003569
REL0000001575	RELM00000009 13.0001	RELM00000023 73.0042	RELM00000030 65.0004	RELM0000003583
REL0000001594	RELM00000009 24	RELM00000023 73.0043	RELM00000030 72	RELM0000003601
REL0000001599	RELM00000009 29	RELM00000023 94	RELM00000030 74	RELM0000003602
REL0000001604	RELM00000009 37	RELM00000023 96	RELM00000030 74.0001	RELM0000003602.0 001
REL0000001613	RELM00000009 44	RELM00000023 97	RELM00000030 74.0002	RELM0000003614
REL0000001618	RELM00000009 44.0001	RELM00000023 99	RELM00000030 80	RELM0000003649
REL0000001632	RELM00000009 48	RELM00000024 02	RELM00000030 87	RELM0000003649.0 001
REL0000001636	RELM00000009 56	RELM00000024 11	RELM00000030 87.0001	RELM0000003663
REL0000001682	RELM00000009 72	RELM00000024 11.0001	RELM00000030 87.0002	RELM0000003679
REL0000001694	RELM00000009 78	RELM00000024 11.0002	RELM00000031 02	RELM0000003679.0 001
REL0000001728	RELM00000009 78.0001	RELM00000024 11.0003	RELM00000031 31	RELM0000003694
REL0000001742	RELM00000009 78.0002	RELM00000024 16	RELM00000031 55	RELM0000003701
REL0000001750	RELM00000009 89	RELM00000024 20	RELM00000031 58	RELM0000003703
REL0000001774	RELM00000009 89.0001	RELM00000024 29	RELM00000031 65	RELM0000003715

REL0000001779	RELM00000009 89.0002	RELM00000024 43	RELM00000031 73	RELM0000003727
REL0000001787	RELM00000009 89.0003	RELM00000024 53	RELM00000031 80	RELM0000003742
REL0000001800	RELM00000009 89.0004	RELM00000024 58	RELM00000031 84	RELM0000003756
REL0000001812	RELM00000009 89.0005	RELM00000024 63	RELM00000031 86	RELM0000003760
REL0000001862	RELM00000009 91	RELM00000024 64	RELM00000031 88	RELM0000003760.0 001
REL0000001894	RELM00000010 00	RELM00000024 64.0001	RELM00000031 88.0001	RELM0000003768
REL0000001896	RELM00000010 00.0001	RELM00000024 71	RELM00000032 03	RELM0000003770
REL0000001902	RELM00000010 27	RELM00000024 74	RELM00000032 03.0001	RELM0000003776
REL0000001930	RELM00000010 29	RELM00000024 74.0001	RELM00000032 03.0002	RELM0000003776.0 001
REL0000001931	RELM00000010 34	RELM00000024 74.0002	RELM00000032 14	RELM0000003776.0 002
REL0000001934	RELM00000010 43	RELM00000024 83	RELM00000032 19	RELM0000003790
REL0000001965	RELM00000010 43.0001	RELM00000024 85	RELM00000032 38	RELM0000003804
REL0000001968	RELM00000010 43.0002	RELM00000024 90	RELM00000032 61	RELM0000003804.0 001
REL0000001971	RELM00000010 43.0003	RELM00000024 93	RELM00000032 67	RELM0000003804.0 001.0001
REL0000001973	RELM00000010 51	RELM00000025 05	RELM00000032 67.0001	RELM0000003818

REL0000001985	RELM00000010 56	RELM00000025 05.0001	RELM00000032 67.0002	RELM0000003818.0 001
REL0000001989	RELM00000010 73	RELM00000025 14	RELM00000032 71	RELM0000003822
REL0000002015	RELM00000010 89.0001	RELM00000025 14.0001	RELM00000032 74	RELM0000003827
REL0000002031	RELM00000010 99	RELM00000025 14.0002	RELM00000033 02	RELM0000003841
REL0000002054	RELM00000011 05	RELM00000025 14.0003	RELM00000033 02.0001	RELM0000003841.0 001
REL0000002071	RELM00000011 06	RELM00000025 14.0004	RELM00000033 02.0002	RELM0000003841.0 002
REL0000002087	RELM00000011 13	RELM00000025 14.0005	RELM00000033 07	RELM0000003841.0 003
REL0000002109	RELM00000011 15	RELM00000025 14.0006	RELM00000033 12	RELM0000003841.0 004
REL0000002123	RELM00000011 29	RELM00000025 14.0007	RELM00000033 12.0001	RELM0000003841.0 005
REL0000002134	RELM00000011 46	RELM00000025 14.0008	RELM00000033 12.0002	RELM0000003841.0 006
REL0000002146	RELM00000011 53	RELM00000025 14.0009	RELM00000033 12.0003	RELM0000003841.0 007
REL0000002166	RELM00000011 57	RELM00000025 14.0010	RELM00000033 12.0004	RELM0000003841.0 008
REL0000002187	RELM00000011 74	RELM00000025 14.0011	RELM00000033 12.0005	RELM0000003841.0 009
REL0000002193	RELM00000011 85	RELM00000025 14.0012	RELM00000033 12.0006	RELM0000003841.0 010
REL0000002199	RELM00000011 85.0001	RELM00000025 14.0013	RELM00000033 12.0007	RELM0000003841.0 011

REL0000002201	RELM00000011 91	RELM00000025 14.0014	RELM00000033 12.0008	RELM0000003841.0 012
REL0000002256	RELM00000011 91.0001	RELM00000025 14.0015	RELM00000033 12.0009	RELM0000003841.0 013
REL0000002264	RELM00000011 91.0002	RELM00000025 14.0016	RELM00000033 12.0010	RELM0000003841.0 014
REL0000002273	RELM00000011 91.0003	RELM00000025 14.0017	RELM00000033 12.0011	RELM0000003841.0 015
REL0000002349	RELM00000011 95	RELM00000025 14.0018	RELM00000033 12.0012	RELM0000003843
REL0000002367	RELM00000012 02	RELM00000025 14.0019	RELM00000033 12.0013	RELM0000003843.0 001
REL0000002378	RELM00000012 03	RELM00000025 14.0020	RELM00000033 14	RELM0000003843.0 002
REL0000002402	RELM00000012 03.0001	RELM00000025 14.0021	RELM00000033 14.0001	RELM0000003843.0 003
REL0000002440	RELM00000012 04	RELM00000025 14.0022	RELM00000033 14.0002	RELM0000003843.0 004
REL0000002447	RELM00000012 12	RELM00000025 14.0023	RELM00000033 14.0003	RELM0000003843.0 005
REL0000002491	RELM00000012 12.0001	RELM00000025 14.0024	RELM00000033 14.0004	RELM0000003847
REL0000002498	RELM00000012 12.0002	RELM00000025 14.0025	RELM00000033 14.0005	RELM0000003847.0 001
REL0000002508	RELM00000012 12.0003	RELM00000025 14.0026	RELM00000033 14.0006	RELM0000003847.0 002
REL0000002515	RELM00000012 22	RELM00000025 14.0027	RELM00000033 14.0007	RELM0000003847.0 003
REL0000002516	RELM00000012 23	RELM00000025 14.0028	RELM00000033 14.0008	RELM0000003847.0 004

REL0000002522	RELM00000012 23.0001	RELM00000025 14.0029	RELM00000033 14.0009	RELM0000003847.0 005
REL0000002558	RELM00000012 42	RELM00000025 14.0030	RELM00000033 14.0010	RELM0000003848
REL0000002576	RELM00000012 43	RELM00000025 14.0031	RELM00000033 14.0011	RELM0000003848.0 001
REL0000002581	RELM00000012 53	RELM00000025 14.0032	RELM00000033 14.0012	RELM0000003848.0 002
REL0000002589	RELM00000012 57	RELM00000025 14.0033	RELM00000033 14.0013	RELM0000003848.0 003
REL0000002594	RELM00000012 58	RELM00000025 14.0034	RELM00000033 14.0014	RELM0000003848.0 004
REL0000002607	RELM00000012 64	RELM00000025 14.0035	RELM00000033 14.0015	RELM0000003848.0 005
REL0000002609	RELM00000012 70	RELM00000025 14.0036	RELM00000033 14.0016	RELM0000003848.0 006
REL0000002614	RELM00000012 85	RELM00000025 14.0037	RELM00000033 14.0017	RELM0000003848.0 007
REL0000002641	RELM00000012 85.0001	RELM00000025 14.0038	RELM00000033 14.0018	RELM0000003848.0 008
REL0000002648	RELM00000012 85.0002	RELM00000025 14.0039	RELM00000033 14.0019	RELM0000003848.0 009
REL0000002672	RELM00000012 85.0003	RELM00000025 14.0040	RELM00000033 14.0020	RELM0000003848.0 010
REL0000002673	RELM00000012 85.0004	RELM00000025 14.0041	RELM00000033 14.0021	RELM0000003848.0 011
REL0000002689	RELM00000012 89	RELM00000025 14.0042	RELM00000033 14.0022	RELM0000003848.0 012
REL0000002692	RELM00000013 10	RELM00000025 14.0043	RELM00000033 14.0023	RELM0000003848.0 013

REL0000002693	RELM00000013 22	RELM00000025 14.0044	RELM00000033 14.0024	RELM0000003848.0 014
REL0000002721	RELM00000013 29	RELM00000025 14.0045	RELM00000033 14.0025	RELM0000003848.0 015
REL0000002730	RELM00000013 30	RELM00000025 14.0046	RELM00000033 14.0026	RELM0000003848.0 016
REL0000002740	RELM00000013 45	RELM00000025 14.0047	RELM00000033 14.0027	RELM0000003848.0 017
REL0000002748	RELM00000013 55	RELM00000025 14.0048	RELM00000033 14.0028	RELM0000003848.0 018
REL0000002779	RELM00000013 58	RELM00000025 14.0049	RELM00000033 14.0029	RELM0000003848.0 019
REL0000002796	RELM00000013 74	RELM00000025 14.0050	RELM00000033 14.0030	RELM0000003848.0 020
REL0000002798	RELM00000013 76	RELM00000025 14.0051	RELM00000033 14.0031	RELM0000003848.0 021
REL0000002808	RELM00000013 76.0001	RELM00000025 14.0052	RELM00000033 14.0032	RELM0000003848.0 022
REL0000002819	RELM00000013 77	RELM00000025 14.0053	RELM00000033 14.0033	RELM0000003848.0 023
REL0000002856	RELM00000013 77.0001	RELM00000025 14.0054	RELM00000033 14.0034	RELM0000003848.0 024
REL0000002910	RELM00000013 78	RELM00000025 14.0055	RELM00000033 14.0035	RELM0000003848.0 025
REL0000002937	RELM00000013 84	RELM00000025 14.0056	RELM00000033 14.0036	RELM0000003848.0 026
REL0000002981	RELM00000013 92	RELM00000025 14.0057	RELM00000033 14.0037	RELM0000003848.0 027
REL0000003078	RELM00000013 95	RELM00000025 14.0058	RELM00000033 14.0038	RELM0000003848.0 028

REL0000003663	RELM00000014 03	RELM00000025 14.0059	RELM00000033 14.0039	RELM0000003848.0 029
REL0000003664	RELM00000014 03.0001	RELM00000025 14.0060	RELM00000033 14.0040	RELM0000003848.0 030
REL0000003665	RELM00000014 03.0002	RELM00000025 14.0061	RELM00000033 14.0041	RELM0000003848.0 031
REL0000003668	RELM00000014 03.0003	RELM00000025 14.0062	RELM00000033 14.0042	RELM0000003851
REL0000003671	RELM00000014 40	RELM00000025 14.0063	RELM00000033 14.0043	RELM0000003851.0 001
REL0000003673	RELM00000014 48.0001	RELM00000025 14.0064	RELM00000033 14.0044	RELM0000003851.0 002
REL0000003674	RELM00000014 48.0002	RELM00000025 14.0065	RELM00000033 14.0045	RELM0000003851.0 003
REL0000003675	RELM00000014 50	RELM00000025 14.0066	RELM00000033 14.0046	RELM0000003851.0 004
REL0000003678	RELM00000014 58	RELM00000025 14.0067	RELM00000033 14.0047	RELM0000003851.0 005
REL0000003699	RELM00000014 59	RELM00000025 14.0068	RELM00000033 14.0048	RELM0000003851.0 006
REL0000003704	RELM00000014 59.0001	RELM00000025 14.0069	RELM00000033 14.0049	RELM0000003851.0 007
REL0000003707	RELM00000014 59.0002	RELM00000025 14.0070	RELM00000033 14.0050	RELM0000003851.0 008
REL0000003710	RELM00000014 64	RELM00000025 14.0071	RELM00000033 14.0051	RELM0000003851.0 009
REL0000003716	RELM00000014 65	RELM00000025 14.0072	RELM00000033 14.0052	RELM0000003851.0 010
REL0000003717	RELM00000014 70	RELM00000025 14.0073	RELM00000033 14.0053	RELM0000003851.0 011

REL0000003718	RELM00000014 80	RELM00000025 14.0074	RELM00000033 14.0054	RELM0000003851.0 012
REL0000003721	RELM00000014 90	RELM00000025 14.0075	RELM00000033 14.0055	RELM0000003851.0 013
REL0000003723	RELM00000014 93	RELM00000025 14.0076	RELM00000033 14.0056	RELM0000003851.0 014
REL0000003727	RELM00000014 94	RELM00000025 14.0077	RELM00000033 14.0057	RELM0000003851.0 015
REL0000003758	RELM00000015 04	RELM00000025 14.0078	RELM00000033 14.0058	RELM0000003851.0 016
REL0000003762	RELM00000015 08	RELM00000025 14.0079	RELM00000033 14.0059	RELM0000003851.0 017
REL0000003765	RELM00000015 15	RELM00000025 14.0080	RELM00000033 14.0060	RELM0000003851.0 018
REL0000003771	RELM00000015 15.0001	RELM00000025 14.0081	RELM00000033 14.0061	RELM0000003851.0 019
REL0000003781	RELM00000015 15.0002	RELM00000025 14.0082	RELM00000033 14.0062	RELM0000003851.0 020
REL0000003786	RELM00000015 15.0003	RELM00000025 14.0083	RELM00000033 14.0063	RELM0000003851.0 021
REL0000003787	RELM00000015 15.0004	RELM00000025 14.0084	RELM00000033 14.0064	RELM0000003851.0 022
REL0000003791	RELM00000015 15.0005	RELM00000025 14.0085	RELM00000033 14.0065	RELM0000003851.0 023
REL0000003801	RELM00000015 40	RELM00000025 14.0086	RELM00000033 14.0066	RELM0000003851.0 024
REL0000003807	RELM00000015 59	RELM00000025 14.0087	RELM00000033 14.0067	RELM0000003851.0 025
REL0000003811	RELM00000015 63	RELM00000025 14.0088	RELM00000033 14.0068	RELM0000003851.0 026

REL0000003814	RELM00000015 81	RELM00000025 14.0089	RELM00000033 14.0069	RELM0000003851.0 027
REL0000003823	RELM00000015 81.0001	RELM00000025 14.0090	RELM00000033 14.0070	REL0000003872
REL0000003826	RELM00000016 02	RELM00000025 14.0091	RELM00000033 14.0071	REL0000003874
REL0000003827	RELM00000016 10	RELM00000025 14.0092	RELM00000033 14.0072	REL0000003875
REL0000003883	RELM00000016 18	RELM00000025 14.0093	RELM00000033 14.0073	REL0000003878
REL0000003960	RELM00000016 36	RELM00000025 14.0094	RELM00000033 14.0074	REL0000003878.0 001
REL0000003975	RELM00000016 36.0001	RELM00000025 29	RELM00000033 14.0075	REL0000003878.0 002
REL0000003983	RELM00000016 37	RELM00000025 29.0001	RELM00000033 14.0076	REL0000003878.0 003
REL0000003996	RELM00000016 59	RELM00000025 29.0002	RELM00000033 14.0077	REL0000003878.0 004
REL0000004004	RELM00000016 75	RELM00000025 46	RELM00000033 14.0078	REL0000003929
REL0000004016	RELM00000017 05	RELM00000025 51	RELM00000033 14.0079	REL0000003936
REL0000004048	RELM00000017 25	RELM00000025 62	RELM00000033 14.0080	REL0000003946
REL0000004059	RELM00000017 25.0001	RELM00000025 62.0001	RELM00000033 14.0081	REL0000003949
REL0000004063	RELM00000017 29	RELM00000025 80	RELM00000033 14.0082	REL0000003961
REL0000004066	RELM00000017 50	RELM00000025 90	RELM00000033 14.0083	REL0000003963

REL0000004079	RELM00000017 55	RELM00000025 90.0001	RELM00000033 14.0084	RELM0000003963.0 001
REL0000004092	RELM00000017 55.0001	RELM00000026 17	RELM00000033 14.0085	RELM0000003964
REL0000004098	RELM00000017 55.0002	RELM00000026 25	RELM00000033 14.0086	RELM0000003965
REL0000004099	RELM00000017 55.0003	RELM00000026 25.0001	RELM00000033 14.0087	RELM0000003993
REL0000004108	RELM00000017 62	RELM00000026 25.0002	RELM00000033 14.0088	RELM0000003996
REL0000004110	RELM00000017 77	RELM00000026 28	RELM00000033 14.0089	RELM0000004007
REL0000004123	RELM00000017 91	RELM00000026 28.0001	RELM00000033 14.0090	RELM0000004007.0 001
REL0000004141	RELM00000018 00	RELM00000026 28.0002	RELM00000033 14.0091	RELM0000004007.0 002
REL0000004150	RELM00000018 09	RELM00000026 34	RELM00000033 14.0092	RELM0000004007.0 003
REL0000004178	RELM00000018 12	RELM00000026 62	RELM00000033 14.0093	RELM0000004007.0 004
REL0000004186	RELM00000018 43	RELM00000026 64	RELM00000033 14.0094	RELM0000004007.0 005
REL0000004191	RELM00000018 43.0001	RELM00000026 86	RELM00000033 14.0095	RELM0000004007.0 006
REL0000004193	RELM00000018 43.0002	RELM00000026 92	RELM00000033 14.0096	RELM0000004007.0 007
REL0000004195	RELM00000018 43.0003	RELM00000026 95	RELM00000033 14.0097	RELM0000004033
REL0000004261	RELM00000018 43.0004	RELM00000027 08	RELM00000033 14.0098	RELM0000004037

REL0000004269	RELM00000018 44	RELM00000027 21	RELM00000033 14.0099	RELM0000004052
REL0000004273	RELM00000018 44.0001	RELM00000027 21.0001	RELM00000033 14.0100	RELM0000004052.0 001
REL0000004308	RELM00000018 47.0001	RELM00000027 21.0002	RELM00000033 14.0101	RELM0000004052.0 002
REL0000004365	RELM00000018 51	RELM00000027 25	RELM00000033 14.0102	RELM0000004053
REL0000004390	RELM00000018 51.0001	RELM00000027 29	RELM00000033 14.0103	RELM0000004053.0 001
REL0000004393	RELM00000018 51.0002	RELM00000027 29.0001	RELM00000033 14.0104	RELM0000004071
REL0000004432	RELM00000018 51.0003	RELM00000027 55	RELM00000033 14.0105	RELM0000004072
REL0000004451	RELM00000018 51.0004	RELM00000027 59	RELM00000033 14.0106	RELM0000004077.0 001
REL0000004473	RELM00000018 51.0005	RELM00000027 62	RELM00000033 14.0107	RELM0000004077.0 002
REL0000004481	RELM00000018 51.0006	RELM00000027 71	RELM00000033 14.0108	RELM0000004084
REL0000004508	RELM00000018 51.0007	RELM00000027 75	RELM00000033 14.0109	RELM0000004101
REL0000004534	RELM00000018 51.0008	RELM00000027 75.0001	RELM00000033 14.0110	RELM0000004103
REL0000004558	RELM00000018 51.0009	RELM00000027 79	RELM00000033 14.0111	RELM0000004122
REL0000004566	RELM00000018 51.0010	RELM00000027 80	RELM00000033 14.0112	RELM0000004124
REL0000004580	RELM00000018 51.0011	RELM00000027 84	RELM00000033 14.0113	RELM0000004125

REL0000004600	RELM00000018 51.0012	RELM00000027 84.0001	RELM00000033 14.0114	RELM0000004125.0 001
REL0000004676	RELM00000018 51.0013	RELM00000027 84.0002	RELM00000033 14.0115	RELM0000004141
REL0000004682	RELM00000018 66	RELM00000027 84.0003	RELM00000033 14.0116	RELM0000004154
REL0000004692	RELM00000018 82	RELM00000027 84.0004	RELM00000033 14.0117	RELM0000004154.0 001
REL0000004702	RELM00000019 08	RELM00000027 84.0005	RELM00000033 14.0118	RELM0000004154.0 001.0001
REL0000004729	RELM00000019 12	RELM00000027 84.0006	RELM00000033 14.0119	RELM0000004159
REL0000004764	RELM00000019 27	RELM00000027 84.0007	RELM00000033 14.0120	RELM0000004159.0 001
REL0000004770	RELM00000019 27.0001	RELM00000027 84.0008	RELM00000033 14.0121	RELM0000004164
REL0000004779	RELM00000019 37	RELM00000027 84.0009	RELM00000033 14.0122	RELM0000004232
REL0000004796	RELM00000019 46	RELM00000027 84.0010	RELM00000033 14.0123	RELM0000004236
REL0000004854	RELM00000019 51	RELM00000027 84.0011	RELM00000033 14.0124	RELM0000004236.0 001
REL0000004856	RELM00000019 51.0001	RELM00000027 84.0012	RELM00000033 14.0125	RELM0000004236.0 002
REL0000004857	RELM00000019 52	RELM00000027 84.0013	RELM00000033 14.0126	RELM0000004236.0 003
REL0000004884	RELM00000019 52.0001	RELM00000027 84.0014	RELM00000033 14.0127	RELM0000004236.0 004
REL0000004906	RELM00000019 52.0002	RELM00000027 84.0015	RELM00000033 14.0128	RELM0000004236.0 005

REL0000004909	RELM00000019 79	RELM00000027 84.0016	RELM00000033 14.0129	RELM0000004236.0 006
REL0000004910	RELM00000019 79.0001	RELM00000027 84.0017	RELM00000033 14.0130	RELM0000004236.0 007
REL0000004932	RELM00000019 79.0002	RELM00000027 84.0018	RELM00000033 14.0131	RELM0000004236.0 008
REL0000004970	RELM00000019 82	RELM00000027 84.0019	RELM00000033 14.0132	RELM0000004236.0 009
REL0000004976	RELM00000019 99	RELM00000027 84.0020	RELM00000033 14.0133	RELM0000004236.0 010
REL0000005019	RELM00000020 06	RELM00000027 84.0021	RELM00000033 14.0134	RELM0000004236.0 011
RELD000000005 0	RELM00000020 11	RELM00000027 84.0022	RELM00000033 14.0135	RELM0000004236.0 012
RELD000000005 2	RELM00000020 15	RELM00000027 84.0023	RELM00000033 14.0136	RELM0000004236.0 013
RELD000000005 4	RELM00000020 16	RELM00000027 84.0024	RELM00000033 14.0137	RELM0000004236.0 014
RELD000000005 5	RELM00000020 22	RELM00000027 84.0025	RELM00000033 14.0138	RELM0000004236.0 015
RELD000000005 6	RELM00000020 25	RELM00000027 84.0026	RELM00000033 14.0139	RELM0000004236.0 016
RELD000000005 9	RELM00000020 32	RELM00000027 84.0027	RELM00000033 14.0140	RELM0000004236.0 017
RELD000000006 4	RELM00000020 32.0001	RELM00000027 84.0028	RELM00000033 14.0141	RELM0000004236.0 018
RELD000000006 6	RELM00000020 32.0002	RELM00000027 84.0029	RELM00000033 14.0142	RELM0000004236.0 019
RELD000000006 7	RELM00000020 45	RELM00000027 84.0030	RELM00000033 14.0143	RELM0000004236.0 020

RELD000000006 8	RELM00000020 56	RELM00000027 84.0031	RELM00000033 14.0144	RELM0000004236.0 021
RELD000000006 9	RELM00000020 56.0001	RELM00000027 84.0032	RELM00000033 14.0145	RELM0000004236.0 022
RELD000000007 1	RELM00000020 59	RELM00000027 84.0033	RELM00000033 14.0146	RELM0000004236.0 023
RELD000000007 5	RELM00000020 76	RELM00000027 84.0034	RELM00000033 14.0147	RELM0000004236.0 024
RELM000000000 04	RELM00000020 76.0001	RELM00000027 84.0035	RELM00000033 14.0148	RELM0000004236.0 025
RELM000000000 04.0001	RELM00000020 76.0002	RELM00000027 84.0036	RELM00000033 14.0149	RELM0000004236.0 026
RELM000000000 20	RELM00000020 78	RELM00000027 84.0037	RELM00000033 14.0150	RELM0000004236.0 027
RELM000000000 21	RELM00000020 91	RELM00000027 84.0038	RELM00000033 14.0151	RELM0000004236.0 028
RELM000000000 30	RELM00000021 07	RELM00000027 84.0039	RELM00000033 14.0152	RELM0000004236.0 029
RELM000000000 30.0001	RELM00000021 07.0001	RELM00000027 84.0040	RELM00000033 14.0153	RELM0000004236.0 030
RELM000000000 30.0002	RELM00000021 07.0002	RELM00000027 84.0041	RELM00000033 14.0154	RELM0000004236.0 031
RELM000000000 36	RELM00000021 07.0003	RELM00000027 84.0042	RELM00000033 14.0155	RELM0000004236.0 032
RELM000000000 37	RELM00000021 10	RELM00000027 84.0043	RELM00000033 14.0156	RELM0000004236.0 033
RELM000000000 59	RELM00000021 11	RELM00000027 84.0044	RELM00000033 14.0157	RELM0000004236.0 034
RELM000000000 72	RELM00000021 11.0001	RELM00000027 84.0045	RELM00000033 14.0158	RELM0000004236.0 035

RELM00000000 82	RELM00000021 22	RELM00000027 84.0046	RELM00000033 14.0159	RELM0000004236.0 036
RELM00000001 01	RELM00000021 30	RELM00000027 84.0047	RELM00000033 14.0160	RELM0000004236.0 037
RELM00000001 03	RELM00000021 30.0001	RELM00000027 84.0048	RELM00000033 14.0161	RELM0000004236.0 038
RELM00000001 29	RELM00000021 30.0002	RELM00000027 84.0049	RELM00000033 14.0162	RELM0000004236.0 039
RELM00000001 29.0001	RELM00000021 30.0003	RELM00000027 84.0050	RELM00000033 14.0163	RELM0000004240
RELM00000001 31	RELM00000021 30.0004	RELM00000027 84.0051	RELM00000033 14.0164	RELM0000004243
RELM00000001 32	RELM00000021 30.0005	RELM00000027 84.0052	RELM00000033 14.0165	RELM0000004245
RELM00000001 36	RELM00000021 30.0006	RELM00000027 84.0053	RELM00000033 14.0166	RELM0000004283
RELM00000001 40	RELM00000021 43	RELM00000027 84.0054	RELM00000033 14.0167	RELM0000004283.0 001
RELM00000001 40.0001	RELM00000021 47	RELM00000027 84.0055	RELM00000033 14.0168	RELM0000004311
RELM00000001 46	RELM00000021 68	RELM00000027 84.0056	RELM00000033 14.0169	RELM0000004317
RELM00000001 61	RELM00000021 74	RELM00000027 84.0057	RELM00000033 14.0170	RELM0000004327
RELM00000001 61.0001	RELM00000021 74.0001	RELM00000027 84.0058	RELM00000033 14.0171	RELM0000004327.0 001
RELM00000001 61.0002	RELM00000021 83	RELM00000027 84.0059	RELM00000033 14.0172	RELM0000004338
RELM00000001 61.0003	RELM00000021 99	RELM00000027 84.0060	RELM00000033 14.0173	RELM0000004351

RELM00000001 61.0004	RELM00000022 05	RELM00000027 84.0061	RELM00000033 14.0174	RELM0000004433
RELM00000001 61.0005	RELM00000022 45	RELM00000027 84.0062	RELM00000033 14.0175	RELM0000004548
RELM00000001 61.0006	RELM00000022 60	RELM00000027 84.0063	RELM00000033 14.0176	RELM0000004548.0 001
RELM00000001 62	RELM00000022 68	RELM00000027 84.0064	RELM00000033 14.0177	RELM0000004548.0 002
RELM00000001 62.0001	RELM00000022 74	RELM00000027 84.0065	RELM00000033 14.0178	RELM0000004623
RELM00000001 64	RELM00000022 77	RELM00000027 84.0066	RELM00000033 14.0179	RELM0000004623.0 001
RELM00000001 64.0001	RELM00000022 78	RELM00000027 84.0067	RELM00000033 14.0180	RELM0000004623.0 002
RELM00000001 64.0002	RELM00000022 79	RELM00000027 84.0068	RELM00000033 14.0181	RELM0000004642
RELM00000001 68	RELM00000022 88	RELM00000027 84.0069	RELM00000033 14.0182	RELM0000004642.0 001
RELM00000001 69	RELM00000022 88.0001	RELM00000027 84.0070	RELM00000033 14.0183	RELM0000004682
RELM00000001 72	RELM00000023 00	RELM00000027 84.0071	RELM00000033 14.0184	RELM0000004784
RELM00000001 72.0001	RELM00000023 15	RELM00000027 84.0072	RELM00000033 14.0185	RELM0000004791
RELM00000001 72.0002	RELM00000023 18	RELM00000027 84.0073	RELM00000033 14.0186	RELM0000004791.0 001
RELM00000001 79	RELM00000023 23	RELM00000027 84.0074	RELM00000033 14.0187	RELM0000004791.0 002
RELM00000001 87	RELM00000023 25	RELM00000027 84.0075	RELM00000033 14.0188	RELM0000004804

RELM00000001 87.0001	RELM00000023 33	RELM00000027 84.0076	RELM00000033 14.0189	RELM0000004835
RELM00000001 87.0002	RELM00000023 54	RELM00000027 84.0077	RELM00000033 14.0190	RELM0000004858
RELM00000001 92	RELM00000023 54.0001	RELM00000027 84.0078	RELM00000033 14.0191	RELM0000004858.0 001
RELM00000001 92.0001	RELM00000023 54.0002	RELM00000027 84.0079	RELM00000033 14.0192	RELM0000004858.0 002
RELM00000001 92.0002	RELM00000023 54.0003	RELM00000027 85	RELM00000033 15	RELM0000004872
RELM00000001 95	RELM00000023 54.0004	RELM00000027 90	RELM00000033 17	RELM0000004878
RELM00000001 95.0001	RELM00000023 54.0005	RELM00000027 90.0001	RELM00000033 24	RELM0000004886
RELM00000001 96	RELM00000023 54.0006	RELM00000027 90.0002	RELM00000033 38	RELM0000004886.0 001
RELM00000002 08	RELM00000023 54.0007	RELM00000027 90.0003	RELM00000033 38.0001	RELM0000004886.0 002
RELM00000002 09	RELM00000023 54.0008	RELM00000027 90.0004	RELM00000033 63	RELM0000004895
RELM00000002 14	RELM00000023 54.0009	RELM00000027 90.0005	RELM00000033 66	RELM0000004895.0 001
RELM00000002 14.0001	RELM00000023 54.0010	RELM00000027 90.0006	RELM00000033 66.0001	RELM0000004932
RELM00000002 14.0002	RELM00000023 54.0011	RELM00000027 90.0007	RELM00000033 66.0002	RELM0000005047
RELM00000002 14.0003	RELM00000023 54.0012	RELM00000027 90.0008	RELM00000033 73	RELM0000005076
RELM00000002 14.0004	RELM00000023 54.0013	RELM00000027 90.0009	RELM00000033 73.0001	RELM0000005085

RELM00000002 14.0005	RELM00000023 54.0014	RELM00000027 90.0010	RELM00000033 73.0002	RELM0000005085.0 001
RELM00000002 14.0006	RELM00000023 54.0015	RELM00000027 90.0011	RELM00000033 73.0003	RELM0000005085.0 002
RELM00000002 14.0007	RELM00000023 54.0016	RELM00000027 90.0012	RELM00000033 73.0004	RELM0000005085.0 003
RELM00000002 14.0008	RELM00000023 54.0017	RELM00000027 93	RELM00000033 73.0005	RELM0000005129
RELM00000002 14.0009	RELM00000023 54.0018	RELM00000028 03	RELM00000033 73.0006	RELM0000005132
RELM00000002 14.0010	RELM00000023 54.0019	RELM00000028 03.0001	RELM00000033 73.0007	RELM0000005132.0 001
RELM00000002 14.0011	RELM00000023 54.0020	RELM00000028 03.0002	RELM00000033 73.0008	RELM0000005194
RELM00000002 14.0012	RELM00000023 54.0021	RELM00000028 04	RELM00000033 73.0009	RELM0000005196
RELM00000002 14.0013	RELM00000023 54.0022	RELM00000028 04.0001	RELM00000033 73.0010	RELM0000005196.0 001
RELM00000002 14.0014	RELM00000023 54.0023	RELM00000028 04.0002	RELM00000033 74	RELM0000005212
RELM00000002 14.0015	RELM00000023 54.0024	RELM00000028 10	RELM00000033 78	RELM0000005213
RELM00000002 14.0016	RELM00000023 54.0025	RELM00000028 10.0001	RELM00000033 79	RELM0000005220
RELM00000002 14.0017	RELM00000023 54.0026	RELM00000028 10.0002	RELM00000033 84	RELM0000005229
RELM00000002 14.0018	RELM00000023 54.0027	RELM00000028 10.0003	RELM00000033 96	RELM0000005247
RELM00000002 14.0019	RELM00000023 54.0028	RELM00000028 38	RELM00000033 96.0001	RELM0000005257

RELM00000002 14.0020	RELM00000023 54.0029	RELM00000028 42	RELM00000033 96.0002	RELM0000005319
RELM00000002 14.0021	RELM00000023 54.0030	RELM00000028 42.0001	RELM00000033 96.0003	RELM0000005319.0 001
RELM00000002 14.0022	RELM00000023 54.0031	RELM00000028 62	RELM00000033 96.0004	RELM0000005349
RELM00000002 14.0023	RELM00000023 54.0032	RELM00000028 63	RELM00000034 01	RELM0000005380
RELM00000002 14.0024	RELM00000023 54.0033	RELM00000028 63.0001	RELM00000034 13	RELM0000005395
RELM00000002 14.0025	RELM00000023 54.0034	RELM00000028 63.0002	RELM00000034 39	RELM0000005440
RELM00000002 14.0026	RELM00000023 54.0035	RELM00000028 75	RELM00000034 40	RELM0000005484
RELM00000002 14.0027	RELM00000023 54.0036	RELM00000028 75.0001	RELM00000034 40.0001	RELM0000005574
RELM00000002 14.0028	RELM00000023 54.0037	RELM00000028 75.0002	RELM00000034 40.0002	RELM0000005574.0 001
RELM00000002 14.0029	RELM00000023 54.0038	RELM00000028 75.0003	RELM00000034 40.0003	RELM0000005574.0 002
RELM00000002 14.0030	RELM00000023 54.0039	RELM00000028 75.0004	RELM00000034 40.0004	RELM0000005574.0 003
RELM00000002 14.0031	RELM00000023 54.0040	RELM00000028 80	RELM00000034 40.0005	RELM0000005574.0 004
RELM00000002 14.0032	RELM00000023 54.0041	RELM00000028 80.0001	RELM00000034 40.0006	RELM0000005574.0 005
RELM00000002 14.0033	RELM00000023 54.0042	RELM00000028 80.0002	RELM00000034 46	RELM0000005574.0 006
RELM00000002 14.0034	RELM00000023 54.0043	RELM00000028 81	RELM00000034 60	RELM0000005574.0 007

RELM00000002 14.0035	RELM00000023 54.0044	RELM00000028 91	RELM00000034 63	RELM0000005574.0 008
RELM00000002 14.0036	RELM00000023 54.0045	RELM00000028 91.0001	RELM00000034 73	RELM0000005574.0 009
RELM00000002 14.0037	RELM00000023 54.0046	RELM00000028 91.0002	RELM00000034 73.0001	RELM0000005574.0 010
RELM00000002 14.0038	RELM00000023 54.0047	RELM00000028 92	RELM00000034 73.0002	RELM0000005574.0 011
RELM00000002 14.0039	RELM00000023 54.0048	RELM00000028 99	RELM00000034 73.0003	RELM0000005574.0 012
RELM00000002 14.0040	RELM00000023 54.0049	RELM00000029 36	RELM00000034 73.0004	RELM0000005574.0 013
RELM00000002 14.0041	RELM00000023 54.0050	RELM00000029 43	RELM00000034 73.0005	RELM0000005635
RELM00000002 14.0042	RELM00000023 54.0051	RELM00000029 43.0001	RELM00000034 73.0006	RELM0000005635.0 001
RELM00000002 14.0043	RELM00000023 54.0052	RELM00000029 56	RELM00000034 73.0007	RELM0000005639
RELM00000002 14.0044	RELM00000023 54.0053	RELM00000029 56.0001	RELM00000034 73.0008	RELM0000005668
RELM00000002 14.0045	RELM00000023 54.0054	RELM00000029 65	RELM00000034 73.0009	RELM0000005671
RELM00000002 14.0046	RELM00000023 54.0055	RELM00000029 89	RELM00000034 73.0010	RELM0000005671.0 001
RELM00000002 14.0047	RELM00000023 54.0056	RELM00000029 93	RELM00000034 73.0011	RELM0000005671.0 002
RELM00000002 14.0048	RELM00000023 54.0057	RELM00000029 96	RELM00000034 73.0012	RELM0000005672
RELM00000002 14.0049	RELM00000023 54.0058	RELM00000029 96.0001	RELM00000034 73.0013	RELM0000005702

RELM00000002 14.0050	RELM00000023 54.0059	RELM00000029 97	RELM00000034 73.0014	RELM0000005776
RELM00000002 14.0051	RELM00000023 54.0060	RELM00000030 06	RELM00000034 73.0015	RELM0000005793
RELM00000002 17	RELM00000023 54.0061	RELM00000030 11	RELM00000034 73.0016	REL0000000001
RELM00000002 17.0001	RELM00000023 54.0062	RELM00000030 11.0001	RELM00000034 73.0017	RELV000000281
RELM00000002 41	RELM00000023 54.0063	RELM00000030 16	RELM00000034 73.0018	RELVM0000000057
RELM00000002 84	RELM00000023 54.0064	RELM00000030 16.0001	RELM00000034 73.0019	RELVM0000000065
RELM00000003 09	RELM00000023 54.0065	RELM00000030 16.0002	RELM00000034 73.0020	RELVM0000000080
RELM00000003 09.0001	RELM00000023 54.0066	RELM00000030 18	RELM00000034 73.0021	RELVM0000000102

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN THE MATTER OF THE SEARCH OF
THE FORENSIC COPY OF THE CELL
PHONE OF REPRESENTATIVE SCOTT
PERRY

Case No. 22-sc-2144

Chief Judge Beryl A. Howell

UNDER SEAL

MEMORANDUM OPINION

Harkening back to its sister clause in the English Bill of Rights of 1689, the Speech or Debate Clause of the U.S. Constitution (“the Clause”), *see* U.S. CONST. art. I, § 6, cl. 1., was designed to ensure the independence of the legislature and enforce the separation of powers. *United States v. Johnson*, 383 U.S. 169, 178 (1966).¹ Members of Congress making impassioned speeches on the floor of the House or Senate chambers or having frank deliberations among themselves or legislative staff about legislative matters, with such activities potentially accompanied by the expression of harsh, offensive and even slanderous critiques or potentially illegal proposals, were among the Framers’ concerns in drafting the Clause to protect those legislators “against possible prosecution by an unfriendly executive and conviction by a hostile judiciary.” *Id.* at 179. Those foundational concerns for our tripartite federal government must be applied today in considering the extent to which the Speech or Debate Clause shields disclosure of records on a Member’s personal cell phone when those records are responsive to a probable cause search warrant issued in connection with an ongoing grand jury investigation.

¹ *See Kilbourn v. Thompson*, 103 U.S. 168, 202 (1880) (summarizing British historical precedent as follows: “When, however, the revolution of 1688 expelled the last of the Stuarts and introduced a new dynasty, ... a bill of rights [was] formally declared by the Parliament and assented to by the crown. One of these declarations is ‘that the freedom of speech, and debates, and proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament.’” (internal citations omitted)).

The Member in question is Congressman Scott Perry (“Rep. Perry”), who has represented the Commonwealth of Pennsylvania’s Tenth Congressional District since January 2013. *See* Rep. Perry’s Resp. to the Gov’t’s Brief Regarding the Applicability of the Speech or Debate Clause (“Perry Resp.”) at 4, ECF No. 15. Rep. Perry is also a member of, and the recently elected Chairman for, the House Freedom Caucus (“HFC”), whose mission, in part, is “to give a voice to countless Americans who feel that Washington does not represent them.” Rep. Perry’s Mot. for Non-Disclosure to the Gov’t (“Perry Mot.”) at 2, ECF No. 21

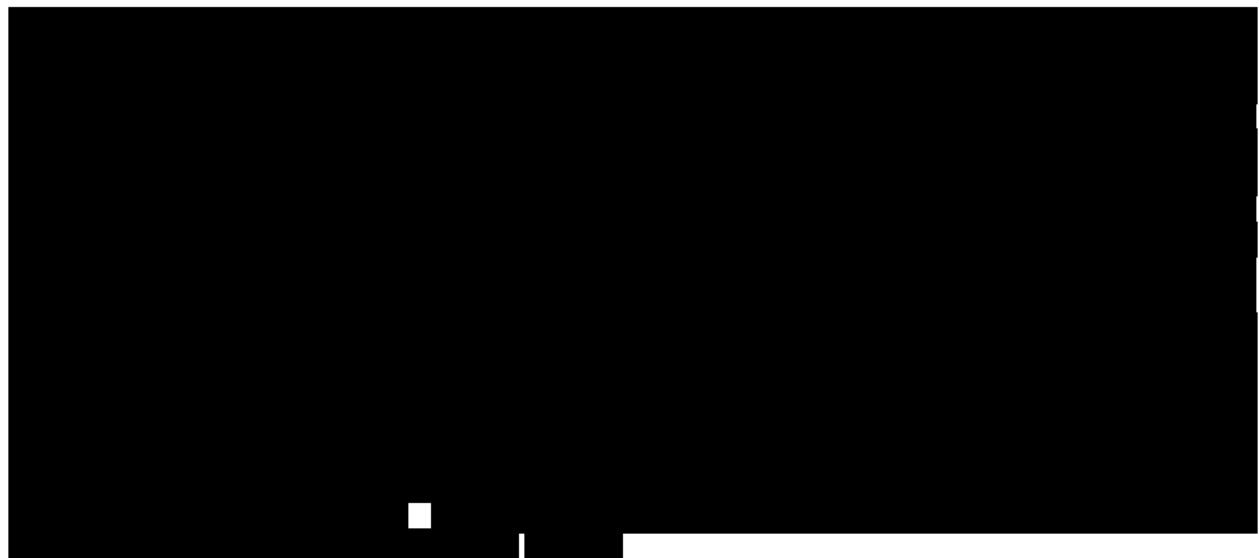
As part of a grand jury investigating potential federal criminal law violations stemming from efforts to overturn the 2020 presidential election, the government uncovered evidence of Rep. Perry using his personal cell phone to communicate with individuals allegedly engaged in those efforts over critical time periods at issue in the investigation. In pursuing the criminal investigation, the government obtained and executed a probable cause warrant issued by a magistrate judge in the Middle District of Pennsylvania to seize Rep. Perry’s personal cell phone and forensically extract an image of its contents in August 2022, after which extraction the cell phone was promptly returned to Rep. Perry. *See* Aff. of Federal Bureau of Investigation (“FBI”) Special Agent in Support of Appl. for Search Warrant (dated Aug. 18, 2022) (“D.D.C. Warrant Aff.”), ¶ 7, ECF No. 1; *see also* M.D. PA Warrant (authorized August 2, 2022), ECF No. 23. The government then sought a separate search warrant to review the contents of the forensic extraction, in accordance with a proposed search protocol designed to protect Rep. Perry’s privilege under the Clause, which warrant, along with the search protocol, as Attachment C, were ultimately approved by this Court. *See* D.D.C. Appl. for Search Warrant (dated Aug. 18, 2022), ECF No. 1; D.D.C. Warrant (authorized Aug. 18, 2022) (“D.D.C. Warrant”), Att. C, ECF No. 4.² In accordance with

² [REDACTED]

this search protocol, Rep. Perry was provided the opportunity, before any government access to the contents of his cell phone, to assert his privilege under the Speech or Debate Clause. *See id.* at § 2.b–d. He has now done so and seeks to block the government’s review of 2,219 responsive records, claiming privilege under the Clause. *See Perry Mot.* at 4; *see also* Rep. Perry’s *Ex parte* Suppl. to His Mot. for Nondisclosure (“Perry Suppl. (*ex parte*)”), ECF No. 22.

The government, without having seen the withheld records but mindful of the critical context that the task of executing the D.D.C. Warrant focuses solely on records responsive to the warrant and that, while broad, the Clause’s coverage is not unfettered, contests the withholding of these records and requests *in camera* review to assess the appropriateness of Rep. Perry’s withholding. *See Gov’t’s Objs. to Rep. Perry’s Priv. Assertions* (“Gov’t’s Mem”), ECF No. 19.

Following *in camera* review of 2,219 documents over which Rep. Perry claims privilege, along with his accompanying motion and *ex parte* supplement explaining the bases for his claims of privilege, the Court concludes that few of these withheld records are protected by the Clause. Specifically, 2,055 of the 2,219 responsive records are not privileged under the Clause and thus



must be disclosed to the government, with the remaining 161 records properly withheld in full and three records in part.

Accordingly, as further explained below, Rep. Perry's motion to withhold from the government access to certain responsive records on his cell phone is **GRANTED IN PART AND DENIED IN PART**.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Resolution of Rep. Perry's claims of privilege under the Clause has, thus far, proceeded in three phases: (1) issuance and execution of the M.D. PA and D.D.C. Warrants for the contents of Rep. Perry's personal cell phone; (2) Rep. Perry's invocation of the Clause to withhold information on his cell phone from law enforcement scrutiny and subsequent initiation of judicial involvement in execution of the D.D.C. Warrant; and (3) Rep. Perry's submission of over two thousand responsive records for *in camera* review of applicability of the Clause. Each phase is discussed *seriatim*.

A. Issuance and Execution of Search Warrants

As already noted, a warrant to seize Rep. Perry's personal cell phone was issued by a magistrate judge in the Middle District of Pennsylvania and executed on August 9, 2022, when the Federal Bureau of Investigation ("FBI") forensically extracted an image of the phone's contents. *See* D.D.C. Warrant Aff., ¶ 7; *see also* M.D. PA Warrant. This seizure warrant did not permit a search of the phone's contents, but rather only a forensic copying or extraction of information on the phone. *See* Aff. of FBI Special Agent in Support of Appl. for M.D. PA Search Warrant ¶ 141, ECF No. 1-1. After promptly returning the cell phone to Rep. Perry, the government sought a separate search warrant in this Court to review the contents of the forensic extraction, in accordance with a search protocol appended as Attachment C to the warrant. *See* D.D.C. Warrant,

Att. C at § 1; D.D.C. Warrant Aff. at 9 ¶ 1 (“I have been informed by the Prosecutors overseeing the investigation in this matter that they have decided to adopt special procedures in light of the possibility the forensic extraction of the Device . . . contains materials created that are protected by the Speech or Debate Privilege[.]”).³ After a determination that there was probable cause to believe that evidence of criminal activity would be found on the targeted cell phone, the government’s search warrant was approved on August 18, 2022. D.D.C. Warrant at 1.

The government provided Rep. Perry, through his counsel, with a copy of the Attachment C protocol, on August 18, 2022, followed shortly thereafter, on August 23, 2022, with a forensic extraction of the contents of the phone. Gov’t’s Opp’n to Rep. Perry’s Mot. for Ext. of Time at 2–3, ECF No. 8. As provided in the Attachment C protocol, Rep. Perry was given thirty days to first assert his privilege—or not—under the Clause with respect to any information on his cell phone. *See* D.D.C. Warrant, Att. C at § 2.b–d. Attachment C provided that the government could then ask for judicial review of “the records over which Congressman Perry has asserted privilege for the Court to make a final determination whether they contain privileged information.” *Id.* at § 2.d.

B. Rep. Perry’s Initiation of Judicial Involvement in Execution of D.D.C. Warrant

As the end of the review period approached—after the government had extended the initial thirty-day period by an additional fourteen days at Rep. Perry’s request, Gov’t’s Opp’n at 1—Rep. Perry petitioned this Court, on October 6, 2022, for additional time to review the phone’s contents and assert privilege under the Clause. *See* Rep. Perry’s Mot. for Ext. of Time, ECF No. 7. Rep.

³ The government has employed the same protocol reflected in Attachment C in other criminal cases involving congressional Members, including, for example, in seeking a search warrant, issued in 2020, for the cell phone of Senator Richard Burr. *See* Appl. for Search Warrant (dated May 13, 2020), Att. C, *In re Application Of L.A. Times Commc’ns LLC to Unseal Court Recs.*, Case No. 21-mc-00016-BAH, ECF No. 36-1 (D.D.C. Sept. 5, 2022) (requiring the same procedures outlined in Attachment C to D.D.C. Warrant for Rep. Perry’s personal cell phone).

Perry explained that responsive records on his phone implicate the Clause’s protections because they involve communications with his staff, members of Congress, and others, and he required additional time to review those records and create the requisite privilege log. *Id.* at 5, 9–10.

Following the completion of briefing on Rep. Perry’s motion for an extension and a sealed hearing, held on October 18, 2022, a scheduling order was issued that required Rep. Perry to provide a privilege log of the records already reviewed by 6:00 PM the same day, “identifying each record by date, recipients, sender, and subject matter, as required under Attachment C to the [D.D.C. Search Warrant], for the 1,041 records he has reviewed and the 33 records in the ‘Notes’ category of extracted information from his personal cell phone . . . that he believes are subject to the Speech or Debate Clause privilege.” Minute Order (October 18, 2022) (“Perry Privilege Log Order”). He was further instructed to provide to the government any records over which he did not claim privilege, and to “conduct review, at a rate of 800 records per business day, of the remaining 9,660 records to determine whether he asserts the Speech or Debate Clause privilege as to any record” and provide regular privilege logs to the government on every Friday beginning on October 28, 2022. *Id.* The Perry Privilege Log Order also directed the parties to address several legal issues concerning their respective views on the scope of the Speech or Debate Clause privilege.⁴

The parties’ briefing, while Rep. Perry’s privilege review was underway, highlighted two threshold disputes. First, the parties disputed whether, under *Rayburn House Office Building*,

⁴ These issues included: “whether (a) the Speech or Debate Clause privilege applies to communications found on the personal cell phone of a Member of Congress; (b) the presence of non-legislative third parties to communications otherwise subject to the Speech or Debate Clause privilege vitiates that privilege; (c) the crime-fraud exception is invoked here and, if so, applies to the Speech or Debate Clause privilege.” Perry Privilege Log Order. Both parties agreed that the Clause could apply to communications found on a Member’s personal cell phone, the presence of third parties does not vitiate the privilege, and that no crime-fraud exception to the Clause exists. Gov’t’s Br. Re. Inappl. of Speech or Debate Cl. Priv. at 11–13, ECF No. 13; Perry Resp. at 8–10.

Room 2113, Washington, D.C. 20515, 497 F.3d 654 (D.C. Cir. 2007) (“*Rayburn*”), the procedures outlined in Attachment C could be jettisoned, particularly considering the already three-month delay in executing the warrant to provide the government access to responsive records on Rep. Perry’s cell phone compounded by the further delay *in camera* review of contested documents would pose. *Compare* Gov’t’s Br. Re. Inappl. of Speech or Debate Cl. Priv. (“Gov’t’s Resp.”) at 3 (“The procedures in Attachment C are not constitutionally required, nor are they compelled by the D.C. Circuit’s decision in *Rayburn*. The Court should so rule and hold that the Government is entitled to access the records on Rep. Perry’s phone without regard to those procedures.”), ECF No. 13, *with* Perry Resp. at 1 (“Rep. Perry respectfully seeks the Court’s review pursuant to the process specified in Attachment C of the warrant.”). Second, the parties disputed whether Rep. Perry, as the privilege holder, or the government bears the burden of establishing whether the Clause’s privilege applies. *Compare* Gov’t’s Resp. at 10 (“Rep. Perry bears the burden of proving that the Speech or Debate privilege applies to the documents for which he seeks protection.”), *with* Perry Resp. at 8 (“[I]t is the Government’s burden to demonstrate that its protections do not apply.”).

As to the first issue, the procedures outlined in Attachment C were deemed prudent to follow “to prevent the release of privileged communications to the government” because “*Rayburn* is written sufficiently broadly to contemplate that” information on a Member’s personal cell phone could touch on protected materials, and “the Clause’s non-disclosure privilege applies under *Rayburn* and Attachment C must be followed to prevent the release of privileged communications to the government.” Mem. Op. & Ord. (Nov. 4, 2022) (“Nov. 2022 Order”) at 7–8, ECF No. 18 (citing *Rayburn*, 497 F.3d at 663 (“[W]e hold that a search that allows agents of the Executive to review privileged materials without the Member’s consent violates the Clause. The Executive’s

search of the Congressman’s paper files therefore violated the Clause, but its copying of computer hard drives and other electronic media is constitutionally permissible because the Remand Order affords the Congressman an opportunity to assert the privilege prior to disclosure of privileged materials to the Executive[.]”)).⁵ As to the second issue, the Nov. 2022 Order made clear that Rep. Perry bears the burden of establishing that specific records or communications should be withheld from the government under the Clause. Nov. 2022 Order.

Finally, the order outlined the process for resolving any disputed privilege claims made by Rep. Perry. In this regard, Rep. Perry was directed to furnish any disputed records over which he claimed privilege for *in camera* review, with those withheld records sorted into the following categories he had initially proposed: “(1) communications with cybersecurity individuals, (2) communications with other Members of Congress and staff, (3) communications with Executive Branch officials, (4) communications with Trump Campaign officials, and (5) communications with Pennsylvania State legislators[.]” *Id.* at 12 (citing Perry Resp. at 2). The government’s objections were due by November 14, 2022, while the documents for *in camera* review were to be provided to the Court (in both electronic and paper copy formats) with his accompanying motion, by November 16, 2022. *Id.* at 11–12.

⁵ The “Remand Order” referenced in the D.C. Circuit’s quoted language had been issued by that Court in response to an emergency motion for a stay pending appeal filed by the congressman whose House office had been searched, *Rayburn*, 497 F.3d at 658, and required that the congressman be provided with “copies of computer files made by [the Executive],” and “an opportunity to review the records” tagged as responsive through a keyword search “for the terms listed in the warrant,” *id.* Any such responsive records that the congressman “identified as legislative” had to be reviewed *in camera* by the district court to “make findings regarding whether the specific documents or records are legislative in nature,” *id.* (quoting Remand Order), while the Executive was enjoined “from reviewing any of the seized documents pending further order” of the court or unless the congressman conceded the records were not privileged under the Speech or Debate Clause, *id.* The D.C. Circuit’s Remand Order rejected the original “special procedures” approved by the district court as part of the warrant to use a government “filter team” to identify and remove privileged and nonresponsive records from materials turned over to the investigative team, *id.* at 656–57, because “[t]he special procedures outlined in the warrant affidavit would not have avoided the violation of the Speech or Debate Clause because they denied the Congressman any opportunity to identify and assert the privilege with respect to legislative materials before their compelled disclosure to Executive agents,” *id.* at 662.

The government timely filed its objections to Rep. Perry's claimed privilege over 2,627 records, contending that none of these responsive records were likely integral to a legislative act or performed in a sufficiently procedurally regular fashion to constitute legitimate legislative activity. Gov't's Mem. at 1–2. Rep. Perry confirmed that, upon completion of his privilege review, out of a total of 9,462 responsive documents on his cell phone, he identified 2,627 responsive documents as privileged under the Clause. Rep. Perry's Resp. to the Gov't's Objs. and Req. for Mod. of the Court's Nov. 2022 Order at 1, ECF No. 20. He requested an unopposed extension to ensure all privileged documents were accurately tagged as privileged and in accordance with the five categories outlined in the Nov. 2022 Order, and requested certain modifications to the manner of furnishing the records for *in camera* review. *Id.* at 6–7. The extension and modifications requested by Rep. Perry were largely granted. *See* Minute Order (Nov. 16, 2022).

C. Rep. Perry's Submission of Responsive Records for *In Camera* Review

On November 28, 2022, Rep. Perry submitted for *in camera* review 2,219 responsive records, Perry Mot. at 4, which was slightly fewer than originally estimated, with an accompanying motion and *ex parte* submission, *see* Perry Suppl. (*ex parte*).

To categorize communications accurately while keeping strings of communications together, Rep. Perry provided responsive records organized into fifteen sub-categories, Perry Mot. at 5, which include combinations of the five broader categories initially outlined by Rep. Perry, *see* Perry Resp. at 2, and a so-called “other” category of responsive records, *see* Perry Mot. at 5. This sub-categorization has also been helpful to facilitate *in camera* review. The fifteen sub-categories, and the number of unique responsive records in each, are listed below, in A through O:

[REDACTED]



Perry Mot. at 5.

With *in camera* review of the 2,219 contested responsive records completed, Rep. Perry's motion to withhold responsive records is now ripe for resolution.

II. DISCUSSION

Rep. Perry contends that he is entitled to withhold as privileged under the Clause 2,219 responsive records spanning his communications not only with fellow congressional Members and staff, but also with private individuals and officials with no formal role or function in the United States Congress, including officials with the Trump campaign, the White House, Office of the President, and the Pennsylvania State Legislature. Perry Mot. at 4. He articulates a broad reach of the non-disclosure aspect of the Speech or Debate Clause privilege to block access in a criminal investigation to any communications he had with any person in any capacity when "he was engaged in information gathering that is 'part of, in connection with, or in aide of a legitimate legislative act' . . . even where it is an informal effort undertaken by an individual Member of Congress or their staff." *Id.* at 6 (quoting *McSurely v. McClellan*, 553 F. 2d 1277, 1286 (D.C. Cir. 1976)).

This astonishing view of the scope of the legislative privilege would truly cloak Members of Congress with a powerful dual non-disclosure and immunity shield for virtually any of their activities that could be deemed information gathering about any matter which might engage legislative attention. At the same time, a Member could delay, if not effectively bar, investigative scrutiny and avoid not only criminal or civil liability but also the public reputational harm that such scrutiny could engender, particularly in the view of voters. To be sure, communications that a congressional Member has “attending to human needs or interests not peculiar to a Congress member’s work *qua* legislator may advance a member’s general welfare”—and even his professional and public profile—but to characterize such communications as “‘legislative’ in character[] is to stretch the meaning of that word beyond sensible proportion.” *United States v. Rostenkowski*, 59 F.3d 1291, 1302–03 (D.C. Cir. 1995).

The Clause does not protect extra-legislative communications that are only tangential to matters coming before the Congress, and most of the responsive records withheld by Rep. Perry are merely that. Only 164 responsive records containing communications exclusively with Members of Congress and legislative staff reflect an “integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House,” *Gravel v. United States*, 408 U.S. 606, 625 (1972), and thereby qualify for the Clause’s protection, in whole or in part. As such, those records are properly withheld. The remaining records reflecting his communications with private individuals either with purported cybersecurity expertise or the Trump Campaign, and officials from other branches of the Federal government and State government, do not qualify as privileged and must be disclosed to the government.

Following discussion of the general legal principles governing the scope of the Speech or Debate Clause privilege, the different categories of withheld records are described and then analyzed for application of the Clause's protections.

A. Overview of the Speech or Debate Clause

The Speech or Debate Clause provides that, “for any Speech or Debate in either House, [the Senators and Representatives] shall not be questioned in any other Place.” U.S. CONST. art. I, § 6, Cl. 1. James Wilson, who participated in the drafting of the U.S. Constitution before serving as one of the first Associate Supreme Court Justices, explained that the privilege is rooted in the “indispensabl[e] necess[ity]” for Members of Congress to “enjoy the fullest liberty of speech” and “protect[ion] from the resentment of everyone, however powerful, to whom the exercise of that liberty may occasion offence[,]” so the members can faithfully “discharge [his or her] public trust with firmness and success.” *Tenney v. Brandhove*, 341 U.S. 367, 373 (1951) (quoting Works of James Wilson (Andrews ed. 1896) 38)). Inclusion of the Clause in the U.S. Constitution was considered not only indispensable but was also uncontroversial since the Constitutional convention approved the Clause and ratification proceeded without any apparent disagreement about this provision. *In re Grand Jury Subpoenas*, 571 F.3d 1200, 1204 (D.C. Cir. 2009) (Kavanaugh, J., concurring) (citing Josh Chafetz, *Democracy's Privileged Few* 74, 87–88 (2007); Joseph Story, 1 *Commentaries on the Constitution of the United States* § 863 (1833)) (discussing origin of the Clause).

Ensuring “the independence and integrity of the legislature” by “protecting against possible prosecution by an unfriendly executive and conviction by a hostile judiciary” also “serves the additional function of reinforcing the separation of powers so deliberately established by the Founders.” *Johnson*, 383 U.S. at 178–79; *see also United States v. Helstoski*, 442 U.S. 477, 491–

92 (1979) (citation and quotation marks omitted) (“There is little doubt that the instigation of criminal charges against critical or disfavored legislators by the executive in a judicial forum was the chief fear prompting the long struggle for parliamentary privilege in England and, in the context of the American system of separation of powers, is the predominate thrust of the Speech or Debate Clause[.]” whose “purpose was to preserve the constitutional structure of separate, coequal, and independent branches of government.”); *Lake Country Ests., Inc. v. Tahoe Reg’l Plan. Agency*, 440 U.S. 391, 404–05 (1979) (quotation marks omitted) (explaining that the Clause makes legislators “immune from deterrents to the uninhibited discharge of their legislative dut[ies], not for their private indulgence but for the public good”); *McCarthy v. Pelosi*, 5 F.4th 34, 38 (D.C. Cir. 2021) (quotation marks and citation omitted) (explaining that the Clause’s “central object . . . is to protect the ‘independence and integrity of the legislature. . . by preventing intimidation of legislators by the Executive and accountability before a possibly hostile judiciary’”). As then-Judge Kavanaugh succinctly stated, “the Clause helps maintain the separation of powers among the three Branches.” *In re Grand Jury Subpoenas*, 571 F.3d at 1204 (Kavanaugh, J., concurring).

The Supreme Court first opined on the scope of the Clause in *Kilbourn v. Thompson*. The crux of the issue in *Kilbourn* was whether the Clause could shield members of the House of Representatives from liability on a civil claim of false imprisonment asserted by a witness who refused to answer questions and produce documents about his business interests. The Court answered in the affirmative, declining “a narrow view of the constitutional provision to limit it to words spoken in debate[.]” and reading the Clause more broadly “as forcible in its application to written reports presented in that body by its committees, to resolutions offered, which, though in writing, must be reproduced in speech, and to the act of voting, whether it is done vocally or by passing between the tellers[.]” or “[i]n short, to things generally done in a session of the House by

one of its members in relation to the business before it.” *Kilbourn*, 103 U.S. at 204; *see also id.* (citing as the “most authoritative case in this country on the construction of the provision in regard to freedom of debate in legislative bodies, and being so early after the formation of the Constitution of the United States, is of much weight[.]” a 1808 Massachusetts Supreme Court decision, describing scope of State Constitution’s version of Clause as not “confine[d] [] to delivering an opinion, uttering a speech, or haranguing in debate, but” also extending “to the giving of a vote, to the making of a written report, and to every other act resulting from the nature and in the execution of the office”).

Consistent with its first take in *Kilbourn*, the Supreme Court has since read the Clause “broadly to effectuate its purposes[.]” *Johnson*, 383 U.S. at 180; *see also Hutchinson v. Proxmire*, 443 U.S. 111, 124 (1979) (“[T]he Court has given the Clause a practical rather than a strictly literal reading[.]”). To this end, the Supreme Court has further held that when the Clause’s protections attach, its privileges are absolute. *See Eastland v. U.S. Servicemen’s Fund*, 421 U.S. 491, 503 (1975) (“[O]nce it is determined that Members are acting within the ‘legitimate legislative sphere’ the Speech or Debate Clause is an absolute bar to interference.”); *Rayburn*, 497 F.3d at 661.

Supreme Court jurisprudence makes clear that the Clause provides Members of Congress two substantive protections for their legislative acts. First, “Congressmen and their aides are immune from liability for their actions within the ‘legislative sphere,’ even though their conduct, if performed in other than legislative contexts, would in itself be unconstitutional or otherwise contrary to criminal or civil statutes.” *Doe v. McMillan*, 412 U.S. 306, 312–13 (1973) (quoting *Gravel*, 408 U.S. at 624–25); *see also In re Grand Jury Proc.*, 563 F.2d 577, 584 (3d Cir. 1977) (characterizing the Clause as providing a “nonevidentiary use privilege” that “permits legislative action, as well as free and unfettered legislative debate, without exposing the legislator to criminal

liability”).⁶ Second, the Clause ensures that Members “may not be made to answer” questions about their legislative acts, including in person before a grand or petit jury, *Gravel*, 408 U.S. at 616, though a Member may be called to “testify[] at trials or grand jury proceedings involving *third-party* crimes where the questions do not require testimony about or impugn a legislative act,” *id.* at 622 (emphasis added); *id.* at 626 (holding that a Member was required to testify about his role in private republication of the Pentagon Papers, because his acts involving that publication “were not part and parcel of the legislative process”).

In combination, these two substantive Clause protections preclude questioning of congressional Members (and staff) about legislative acts or using such acts against them in either civil or criminal matters, no matter how corrupt the motivation may be for the legislative activity at issue. *See, e.g., Johnson*, 383 U.S. at 180 (explaining that where “[t]he essence of such a charge . . . is that the Congressman’s conduct was improperly motivated, . . . that is precisely what the Speech or Debate Clause generally forecloses from executive and judicial inquiry”); *Tenney*, 341 U.S. at 377 (explaining that “[t]he claim of an unworthy purpose does not destroy the privilege” and “that it was not consonant with our scheme of government for a court to inquire into the motives of legislators”); *Eastland*, 421 U.S. at 508 (“Our cases make clear that in determining the legitimacy of a congressional act we do not look to the motives alleged to have prompted it.”). In

⁶ Notably, in *Kilbourn*, Supreme Court reserved decision over whether “there may not be things done, in the one House or the other, of an extraordinary character, for which the members who take part in the act may be held legally responsible” should “the members of these bodies so far to forget their high functions and the noble instrument under which they act,” explaining, “we are not prepared to say that such an utter perversion of their powers to a criminal purpose would be screened from punishment by the constitutional provision for freedom of debate.” 103 U.S. at 204–05. *See also Cushing v. Packard*, 30 F.4th 27, 50 (1st Cir. 2022) (quotation marks omitted) (noting that “[i]n line with *Kilbourn*, we have recognized that that there may be some conduct, even within the legislative sphere, that is so flagrantly violative of fundamental constitutional protections that traditional notions of legislative immunity would not deter judicial intervention”). The government has not sought here to exploit this reservation to the Clause’s protection for egregious legislative conduct, and thus, the pending motion presents no occasion to consider whether any such exception applies.

sum, “[i]t is beyond doubt that the Speech or Debate Clause protects against inquiry into acts that occur in the regular course of the legislative process and into the motivation for those acts.” *United States v. Brewster*, 408 U.S. 501, 525 (1972); *Helstoski*, 442 U.S. at 487 (explaining that its precedents “leave no doubt that evidence of a legislative act of a Member may not be introduced by the Government”).

Despite the significant protections provided under the Clause to congressional Members (and staff), the Supreme Court has made clear that the Clause is no “get out of jail free” card. Indeed, “a Member of Congress may be prosecuted under a criminal statute provided that the Government’s case does not rely on legislative acts or the motivation for legislative acts,” *Brewster*, 408 U.S. at 512, since this privilege was “not written into the Constitution simply for the personal or private benefit of Members of Congress,” *id.* at 507. “The privilege is not designed to protect the reputations of congressmen but rather the functioning of Congress.” *Brown & Williamson Tobacco Corp. v. Williams*, 62 F.3d 408, 419 (D.C. Cir. 1995); *see also id.* at 418–19 (quotation marks omitted) (explaining the term “integrity” in the phrase “integrity of the legislative process” is used “not in the sense of reputation for rectitude but rather in the sense of a state of being unimpaired”). As then-Judge Ruth Bader Ginsberg summed up, “[t]he key consideration, Supreme Court decisions teach, is the act presented for examination, not the actor.” *Walker v. Jones*, 733 F.2d 923, 929 (D.C. Cir. 1984).

This crucial focus on the “legislative act” significantly restricts the scope and applicability of the Clause. The Supreme Court “has repeatedly insisted that the Speech or Debate Clause is subject to ‘finite limits,’ refusing to stretch its protective umbrella ‘beyond the legislative sphere’ to conduct not ‘essential to legislating.’” *McSurely*, 553 F.2d at 1284–85 (footnotes omitted) (quoting *Doe*, 412 U.S. at 317, and *Gravel*, 408 U.S. at 621, 624–25). To qualify for Clause

protection, the act must be “directly related to the due functioning of the legislative process.” *Rostenkowski*, 59 F.3d at 1302 (quotation marks omitted). This means that the Clause’s protections apply only to a Members’ legislative acts or activities that are “integral” to a Member’s participation in “the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House.” *Gravel*, 408 U.S. at 625. As *Gravel* makes clear, if an action taken or communication made by a Member or their aide is “essential to the deliberations” of the House or Senate, and questioning the congressional actor would “threaten the integrity or independence” of Congress “by impermissibly exposing its deliberations to executive influence,” then the action is a legislative act to which the privilege applies. *Id.* at 625–26. Conversely, the Clause’s privilege does not apply where interference by the executive or judicial branches “does not draw in question the legislative acts of the defendant member of Congress or his motives for performing them.” *Brewster*, 408 U.S. at 510 (quotation marks omitted); *Barker v. Conroy*, 921 F.3d 1118, 1127 (D.C. Cir. 2019) (quoting *Eastland*, 421 U.S. at 501, and *Brewster*, 408 U.S. at 517) (“Although the Supreme Court has instructed us to ‘read the Speech or Debate Clause broadly to effectuate its purposes,’ the Clause’s ‘shield does not extend beyond what is necessary to preserve the integrity of the legislative process[.]’”).

Examples of “legislative activit[ies]” to which the privilege applies include “[c]ommittee reports, resolutions, and the act of voting[.]” *Gravel*, 408 U.S. at 617; introducing, voting for, and signing a budget ordinance, *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998); subpoenaing records for a committee hearing, *Eastland*, 421 U.S. at 507; interrogating witnesses during committee hearings, *Tenney*, 341 U.S. at 377–78; “exchanges between a Member of Congress and the Member’s staff or among Members of Congress on legislative matters[.]” *Rayburn*, 497 F.3d at

661; creating, administering and enforcing House (or Senate) rules concerning how Members can cast their votes for legislation, *McCarthy*, 5. F.4th at 39; “enforcing [or executing] internal rules of Congress[,]” *Consumers Union of U.S., Inc. v. Periodical Correspondents’ Ass’n*, 515 F.2d 1341, 1350 (D.C. Cir. 1975); and other acts “generally done in a session of the House [or Senate] by one of its members in relation to the business before it, or things said or done by [a Member], as a representative, in the exercise of the functions of that office.” *Brewster*, 408 U.S. at 512–13 (quotation marks and citation omitted).

“That [Members] generally perform certain acts in their official capacity as Senators does not necessarily make all such acts legislative in nature.” *Gravel*, 408 U.S. at 625. Congressional Members’ (and staff’s) activity that falls outside the core legislative activity shielded by the Clause takes various forms and may be merely political or personal, insufficiently official or too loosely tied to pending business before the Congress, or, more egregiously, illegal. In short, the Clause does not shield legislators from “inquiry into activities that are casually or incidentally related to legislative affairs but not a part of the legislative process itself.” *Brewster*, 408 U.S. at 528. Distillation of relevant caselaw reveals at least three general categories of congressional Members’ activities not protected by the Clause.

First, the Clause does not protect conduct only tangentially related, but not necessary or integral, to official legislative action. This limit on the Clause is the hook on which the Supreme Court has relied to clarify that the Clause does not immunize a sitting Member of Congress from being prosecuted for “accepting a bribe in exchange for a promise relat[ed] to an official act,” in violation of 18 U.S.C. §§ 201(c)(1) & (g), *Brewster*, 408 U.S. at 502, because “[t]aking a bribe is . . . no part of the legislative process or function” and is in no way “a legislative act,” *id.* at 526. Proof of such a criminal violation does not make it “necessary to inquire into how [the Member]

spoke, how he debated, how he voted, or anything he did in the chamber or in committee,” but only that he had “tak[en] or agree[d] to take money for a promise to act in a certain way.” *Id.* Consequently, the Speech or Debate Clause privilege does not apply. *See also Gravel*, 408 U.S. at 622 (noting that Clause does not protect “criminal conduct threatening the security of the person or property of others, whether performed [by a Member or] at the direction of [a] [Member] in preparation for or in execution of a legislative act”); *United States v. Renzi*, 651 F.3d 1012, 1020 (9th Cir. 2011) (explaining that if Member’s “‘negotiations’ are not ‘legislative acts,’ then the Clause’s protections would not shield them[,]” and the “Government could prosecute [him] for his allegedly corrupt conduct, and neither the testimonial nor evidentiary privileges would apply”).

Second, though each legislative act inherently carries potential political consequences, general political activities are unprotected by the Clause. The Supreme Court has expressly put outside the Clause’s shield “many activities” in which Members’ engage, including “a wide range of legitimate ‘errands’ performed for constituents, the making of appointments with Government agencies, assistance in securing Government contracts, preparing so-called ‘news letters’ to constituents, news releases, and speeches delivered outside the Congress.” *Brewster*, 408 U.S. at 512. Acknowledging that “[t]he range of these related activities has grown over the years,” and that “[t]hey are performed in part because they have come to be expected by constituents, and because they are a means of developing continuing support for future elections[,]” the Supreme Court nonetheless deemed “these [] entirely legitimate activities” to be “political in nature rather than legislative,” and therefore not within the scope of the Clause’s protections. *Id.* Otherwise, any extension of the Clause to such political matters would “make Members of Congress super-citizens, immune from criminal responsibility.” *Id.* at 516. The Clause was neither intended nor designed for such a broad scope.

The Supreme Court’s distinction in *United States v. Brewster* between generally political and legislative acts provides an important check on the scope of the Clause’s privilege. For example, in *Hutchinson v. Proxmire*, a Senator was sued for allegedly defamatory statements about the plaintiff contained in a newsletter sent to constituents and others. 443 U.S. at 114. The Court rejected the Senator’s argument that newsletters and press releases were privileged in service of the “informing function” of Congress, *see id.* at 132, explaining that disseminating newsletters and press releases is not protected legislative activity since such dissemination is neither “‘essential to the deliberations of the Senate’ [or House] . . . [nor] part of the deliberative process,” *id.* at 130. Other examples of unprotected non-legislative activities regularly engaged in by Members but not protected by the Clause include: “[p]romises by a Member to perform an act in the future[.]” *Helstoski*, 442 U.S. at 489; legislative prayer, *Barker*, 921 F.3d at 1127; communicating with Executive Branch officials, *Doe*, 412 U.S. at 313 (quoting *Gravel*, 408 U.S. at 625) (“Members of Congress may frequently be in touch with and seek to influence the Executive Branch of Government, but this conduct ‘though generally done, is not protected legislative activity.’”); disseminating private documents to individuals or agencies outside of Congress, *see McSurely*, 553 F.2d at 1287 (footnotes and quotation marks omitted) (“Even though Members of Congress or their aides frequently intercede on behalf of constituents with agencies of the Executive Branch or disseminate to the public beyond the legitimate legislative needs of Congress documents introduced at committee hearings, such conduct falls outside of legislative immunity.”); and a Member’s testimony before a committee that is not inquiring into the exercise of the Member’s official powers, *United States v. Rose*, 28 F.3d 181, 189 (1994) (“The testimony was not addressed to a pending bill or to any other legislative matter; it was, instead, the Congressman’s defense of his handling of various personal financial transactions[.]” such that the Congressman “was acting

as a witness to facts relevant to a congressional investigation of his private conduct; he was not acting in a legislative capacity.”).

Third, and of particular relevance here, a Member’s informal investigative efforts or fact-finding inquiries untethered to a formally sanctioned congressional inquiry remain unprotected. To be sure, “[t]he power to investigate and to do so through compulsory process plainly falls within that definition” of the “legitimate legislative sphere” subject to the Clause. *Eastland*, 421 U.S. at 503–04; *see also id.* at 505 (alteration in original) (quoting *Doe*, 412 U.S. at 313) (“the act ‘of authorizing an investigation pursuant to which . . . materials were gathered’ is an integral part of the legislative process”). As the Supreme Court explained, “the power to investigate is inherent in the power to make laws because ‘[a] legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change.’” *Id.* (alteration in original) (quoting *McGrain v. Daugherty*, 273 U.S. 135, 175 (1927)). Yet, the Clause is not a blanket shield for individual congressional Members (or staff) to undertake an investigation, even in their official capacity, of any matter that strikes their interest. *See Bastien v. Off. of Senator Ben Nighthorse Campbell*, 390 F.3d 1301, 1316 (10th Cir. 2004) (“No Supreme Court opinion indicates that Speech or Debate Clause immunity extends to informal information gathering by individual members of Congress. . . . To extend protection to informal information gathering—either personally by a member of Congress or by congressional aides—would be the equivalent of extending Speech or Debate Clause immunity to debates before local radio stations or Rotary Clubs.”).

Assurance that the investigative step is fully and unambiguously authorized for a legislative purpose is critical. In *Eastland*, for example, the Supreme Court declined to bar enforcement of a congressional subpoena issued by a Senate Subcommittee that “was acting under an unambiguous

resolution from the Senate authorizing it to make a complete study of . . . a subject on which legislation could be had.” 421 U.S. at 506 (quotation marks and citation omitted). Consistent with the Supreme Court’s emphasis on the official congressional authorization of an investigative inquiry, the D.C. Circuit has likewise stressed that investigative efforts by congressional Members or staff to “obtain information” are protected by the Clause when those efforts are “performed in a procedurally regular manner.” *Brown & Williamson*, 62 F.3d at 416.

Mindful of the Supreme Court’s caution about “‘finite limits’ to the shield erected by the” Clause, *McSurely*, 553 F.2d at 1287 (quoting *Doe*, 412 U.S. at 317), the D.C. Circuit has bluntly stated that “a Member of Congress or congressional employee is not free to use every conceivable means to obtain investigatory materials, without fear of criminal prosecution or civil suit[.]” *id.* For the privilege to apply to “field investigations by a Senator or his staff[.]” two conditions must be met: (1) the inquiry must have been congressionally authorized; and (2) no “unlawful means” were used to achieve a proper legislative objective because such means “is simply not essential to legislating.” *Id.* at 1286–88. In *McSurely v. McClellan*, an investigator for a congressional subcommittee unlawfully seized and made photocopies of 234 of plaintiffs’ documents, including certain documents with no legislative purpose or relevancy. Even though the Subcommittee was authorized to investigate the types of criminal activities in which the plaintiffs were allegedly involved, the Clause did not protect the investigator’s—and by extension, the Subcommittee’s—unconstitutional seizure of the documents at issue. *Id.* at 1296 (“[T]he immunity shield . . . is not a license to invade privacy where no legislative purpose can be plausibly interposed.”). Thus, the D.C. Circuit concluded that the Subcommittee’s seizure, through an investigator, of the 234 documents at issue was not protected by the Speech or Debate Clause. *Id.*⁷

⁷ At the same time, in careful parsing of the facts, the D.C. Circuit found that official actions taken collectively by Subcommittee Members subsequent to the illegal retrieval of the letters were protected by the Clause, including

The D.C. Circuit has expanded the scope of the Speech or Debate Clause beyond the Supreme Court’s articulated limits by creating a broad non-disclosure privilege for congressional Members’ legislative records, even when only non-legislative records are sought through a search warrant or a subpoena in a criminal investigation. *Rayburn*, 497 F.3d at 656 (“[T]he compelled disclosure of privileged material to the Executive during execution of the search warrant . . . violated the Speech or Debate Clause[.]”); *see also Brown & Williamson*, 62 F.3d at 420 (holding that the Clause prevents the disclosure of legislative documents to third-parties).⁸ In *Rayburn*, the Court held that the Executive could not review paper or electronic records seized in the Congressman’s office, pursuant to a search warrant for non-legislative materials, because the search of such files in the legislator’s office “must have resulted in the disclosure of legislative

the Subcommittee’s use the 234 photocopies “as the basis for issuance of subpoenas for some of the documents, and the procurement of contempt of Congress citations against plaintiffs” for failing to respond to the subpoenas, and thus the Clause barred the plaintiffs from questioning Subcommittee Members on the issue of damages for the issuance of subpoenas to obtain the records. *McSurely*, 553 F.2d at 1296–97. The Court reasoned that, under binding precedent, when “material comes to a legislative committee by means that are unlawful or otherwise subject to judicial inquiry[,] the subsequent use of the documents by the committee staff in the course of official business is privileged legislative activity.” *Id.* Similarly, the plaintiffs’ claim against the Members for “invasion of privacy based on retention and display of their private papers within the Subcommittee for non-legislative purposes” was barred by the Clause because, “[a]lthough the federal defendants [were] not immune from inquiry as to dissemination of the 234 photocopies to individuals or agencies outside of Congress, dissemination within the Subcommittee is privileged activity.” *Id.* at 1297. In short, because the Subcommittee “employed proper process for information ‘on which legislation could be had,’” *id.* at 1298 (quoting *Eastland*, 421 U.S. at 504–07 & n. 15), and the officially issued “subpoenas called for materials that were at least arguably relevant to its investigation,” the Clause protected against claims involving, or questioning regarding, that legislative conduct, *id.*

⁸ *Brown & Williamson Tobacco Corp.* marked the first time the D.C. Circuit held that the Clause equips Members (and staff) with a non-disclosure privilege for legislative documents. 62 F.3d at 420 (“We do not accept the proposition that the testimonial immunity of the Speech or Debate Clause only applies when Members or their aides are personally questioned. Documentary evidence can certainly be as revealing as oral communications . . . and this is true whether or not the documents are sought for the purpose of inquiring into (or frustrating) legislative conduct or to advance some other goals[.]”). Prior to *Brown & Williamson* (and *Rayburn*), the D.C. Circuit had stated that “the Speech or Debate Clause acts as an exclusionary rule and testimonial privilege, as well as substantive defense,” requiring that “plaintiffs must prove their case through evidence which ‘does not draw in question the legislative acts of the defendant member of Congress [and his aides] or [their] motives for performing them,’” *McSurely*, 553 F.2d at 1299 (quoting *Brewster*, 408 U.S. at 526, and *Johnson*, 383 U.S. at 185). Such an exclusionary and testimonial privilege is more limited than the current binding precedent, in this Circuit only, that the Clause operates as a non-disclosure privilege, thereby triggering the time-consuming and resource-intensive task of *in camera* review to resolve disputes about the applicability of the Clause.

materials to agents of the Executive[,]” and it thereby violated the legislator’s rights under the Clause. 497 F.3d at 661.⁹ In the Court’s view, “[t]he special procedures outlined in the warrant affidavit would not have avoided the violation of the Speech or Debate Clause because they denied the Congressman any opportunity to identify and assert the privilege with respect to legislative materials before their compelled disclosure to Executive agents.” *Id.* at 662; *see also id.* at 661 (quotation marks omitted) (explaining that “incidental review . . . does not deny that compelled review by the Executive occurred, nor that it occurred in a location where legislative materials were inevitably to be found, nor that some impairment of legislative deliberations occurred”).

Rayburn stands alone in its conclusion that the Clause affords congressional Members a non-disclosure privilege.¹⁰ The Third and Ninth Circuits are the only other circuits to consider

⁹ *Rayburn* concluded that the investigative agents’ imaging and keyword search for responsive non-legislative records on the congressman’s hard drives and electronic media was constitutionally permissible only “given the Department of Justice’s voluntary freeze of its review of the seized materials and the procedures mandated on remand by this court[.]” 497 F.3d at 655, referring to the Remand Order, *see supra* n.5, since those circumstances meant that “the imaging and keyword search of the Congressman’s computer hard drives and electronic media exposed no legislative material to the Executive, and therefore did not violate the Speech or Debate Clause,” 497 F.3d at 655. In other words, for both paper and electronic records seized from his House office, the congressman was entitled to review the records for potential Clause privilege prior to disclosure to law enforcement agents from the Executive branch. Notably, the congressman involved in *Rayburn* claimed legislative privilege only over paper and electronic records seized in his congressional office and did not object on Clause privilege grounds to the search of documents seized elsewhere during the course of the subsequent criminal investigation into his activities. *See generally, United States v. Jefferson*, Case No. 1:07-cr-00209 (E.D. Va.).

¹⁰ In a concurring opinion in *Rayburn*, Judge Henderson leveled two criticisms at the majority’s analysis: First, *Brown & Williamson* “relied heavily on the Clause’s purpose—shielding the legislative process from disruption—in reading the Clause’s prohibition of ‘question[ing]’ broadly to protect the ‘confidentiality’ of records from the reach of a civil subpoena,” and, in comparison, enforcement of the criminal search warrant would be much less distracting because the warrant would be executed to reduce disruption “by, *inter alia*, executing the warrant when the Congress was not meeting, imaging computer hard drives rather than searching the computers, using specific search terms for both paper and electronic records and, most importantly, creating Filter Teams . . . and ensuring subsequent in camera judicial review to minimize exposure to privileged records,” *Rayburn*, 497 F.3d at 669–70 (Henderson, J., concurring) (citation omitted); and, second, apart from deviating from the Clause’s principal purposes, *Rayburn* could “jeopardize law enforcement tools that have never been considered problematic[.]” leading to a parade of horrors, with Members and their staff being able to delay or circumvent effective criminal prosecution, *id.* at 671–72 (quotation marks omitted) (observing that, if mere “Executive Branch exposure to records of legislative acts” is prohibited by the Clause, a Member would always have to be given advanced notice of any search of her house or property, FBI agents would not be able to voluntarily interview Members and staff, and the ability for the government to effectively prosecute Members for criminal activity would be severely hampered).

the issue and both concluded that the Clause does not create a non-disclosure privilege when applied to records or third-party testimony, but rather operates as a “nonevidentiary use” privilege. *See In re Grand Jury Investigation*, 587 F.2d 589, 597 (3d Cir. 1978) (“But to the extent that the Speech or Debate Clause creates a Testimonial privilege as well as a Use immunity, it does so only for the purpose of protecting the legislator and those intimately associated with him in the legislative process from the harassment of hostile questioning. It is not designed to encourage confidences by maintaining secrecy, for the legislative process in a democracy has only a limited toleration for secrecy.”); *Renzi*, 651 F.3d at 1032 (rejecting the contention “that there exists some grandiose, yet apparently shy, privilege of non-disclosure that the Supreme Court has not thought fit to recognize”); *see also id.* at 1034 (“Simply stated, we cannot agree with our esteemed colleagues on the D.C. Circuit. We disagree with both *Rayburn*’s premise and its effect and thus decline to adopt its rationale.”).¹¹ No matter the critiques, however, *Rayburn* is binding on this Court.

Set against these legal principles, the disputed records are next considered.

B. Review of Disputed Responsive Records on Rep. Perry’s Personal Cell Phone

In accordance with the protocol outlined in the warrant’s Attachment C, Rep. Perry has withheld from production to the government 2,219 responsive records from his cell phone that he

¹¹ *Rayburn* (and the D.C. Circuit’s decision in *Brown & Williamson* twelve years earlier) have also been criticized for overextending the Clause’s protections beyond its founding purposes. *See, e.g.,* Michael L. Shenkman, *Talking About Speech or Debate: Revisiting Legislative Immunity*, 32 YALE L. & POL. REV. 351, 417 (2014) (explaining that the D.C. Circuit took the Clause’s “protection too far by transforming ‘written legislative materials’ into an impermeable physical bunker of non-disclosure” and creating “an area unmoored from history or Supreme Court precedent”); Jay Rothrock, *Striking A Balance: The Speech or Debate Clause’s Testimonial Privilege and Policing Government Corruption*, 24 TOURO L. REV. 739, 756–57 (2008) (footnotes omitted) (“While the Supreme Court has traditionally narrowed the scope of Speech or Debate Clause privileges by refining the definition of ‘legislative acts,’ the *Brown & Williamson* Court implicitly expanded the scope of the clause by broadening ‘questioning’ to include responding to a civil subpoena[.] . . . plac[ing] too great a control over the privilege in legislators’ own hands without providing for an explicit, effective procedure for judicial review. Over a decade later, . . . [in *Rayburn*], the [C]ourt would repeat this same mistake, expanding the scope of the clause through the definition of ‘questioning,’ and thus giving investigated legislators an unjustified increase in control over information in a criminal case.”)

believes are privileged under the Clause, and—over three months after issuance of the D.D.C Warrant—has submitted those records to the Court for *in camera* review to complete execution of that warrant by disclosure to the government of any non-privileged, responsive records. These records are in the form of email and text communications, with some attachments. Broadly speaking, Perry asserts privilege as to these withheld records on the basis that they were part of his “information gathering” efforts in preparation for his legislative role and vote on the certification of the 2020 presidential election on January 6, 2021, pursuant to the Electoral Count Act of 1887 (“ECA”), 24 Stat. 373, 3 U.S.C. §§ 5, 6, and 15, or otherwise “to ensure the integrity of our elections going forward.” Perry Mot. at 6, 10.

The government rightly raises no dispute that activities integral to Rep. Perry’s ECA vote are protected under the Clause. *See generally* Gov’t’s Mem. Certainly, the law is well-settled that “legislative acts for purposes of Speech-or-Debate-Clause immunity include both (i) matters pertaining ‘to the consideration and passage or rejection of proposed legislation,’ and (ii) ‘other matters which the Constitution places within the jurisdiction of either House.’” *McCarthy*, 5 F.4th at 40 (quoting *Gravel*, 408 U.S. at 625). Congress’s role in certifying the results of the Electoral College vote is constitutionally and statutorily mandated. *See* U.S. CONST. amend. XII (“The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed[.]”); 3 U.S.C. § 15 (describing the process by which Members of Congress shall count and certify the electoral votes from each state). Given that certification of the Electoral College vote is a matter which the Constitution places within the jurisdiction of both Houses of Congress, activities necessary and integral to fulfilling that task are entitled to Clause protection.

Rep. Perry's communications with fellow congressional Members and staff directly relating to internal House of Representatives committee assignments or membership, pending legislation or floor votes on such legislative matters, as well as voting and/or speaking order and strategy for the ECA vote on January 6, 2021, are protected under the Clause. Such communications are integral to Rep. Perry's consideration and carrying out of his official role in the legislative and presidential certification processes.

Yet, just as "everything a Member of Congress may regularly do is not a legislative act within the protection of the Speech or Debate Clause" and "legislative acts are not all-encompassing," *Doe*, 412 U.S. at 313 (quotation marks and alteration omitted), not all activity undertaken, even in an official capacity, is shielded by the Clause—a principle that extends to conversations related to the general topic of election integrity or the ECA process. In other words, Rep. Perry's communications with private individuals or officials from government entities other than the Congress do not qualify for protection under the Clause merely because those communications reference the ECA process or election integrity. None of these communications arise in connection with any sanctioned, formal congressional investigation conducted by any committee or other House arm, but instead, as Rep. Perry indicates, reflect his efforts as an individual Member either to obtain or relay information from or to others to be used to defeat or delay certification of the ECA vote and President-elect Joseph R. Biden's victory in the 2020 election. Thus, at best, these communications appear to be only incidental to Rep. Perry's own ECA vote.

As explained below, examination of the withheld responsive records demonstrates that only 164 of the 2,219 responsive records at issue fall, in whole or part, under the Clause's protection.

1. Communications With Private “Cybersecurity” Individuals, Trump Campaign Workers, Pennsylvania State Legislators, and “Others”

Rep. Perry asserts Speech or Debate Clause protection for 678 of his responsive records containing communications with “cybersecurity individuals,” “Trump Campaign officials,” “Pennsylvania State Legislators,” and “Other” individuals, based only on the argument that he was engaging in “fact-finding” efforts “to gather information about the security of the 2020 election and the validity of the electors required to certify the election.” Perry Mot. at 7–8. He offers no other substantive argument for his privilege assertion as to these responsive records and thus these records are discussed together.¹²

As a threshold matter, general descriptions of each of these four categories demonstrates how far afield these communications are from formal legislative activities. First, Rep. Perry communicated with so-called private “cybersecurity individuals”—who may have been former government officials but apparently had no official government cybersecurity (or other) role at the time of the communications—because “he believed [they] have expertise in cybersecurity and intelligence about the security of voting machines and election integrity with respect to the 2020 election, both nationally and in Pennsylvania.” Perry Suppl. (*ex parte*) at 5.¹³ Second, his

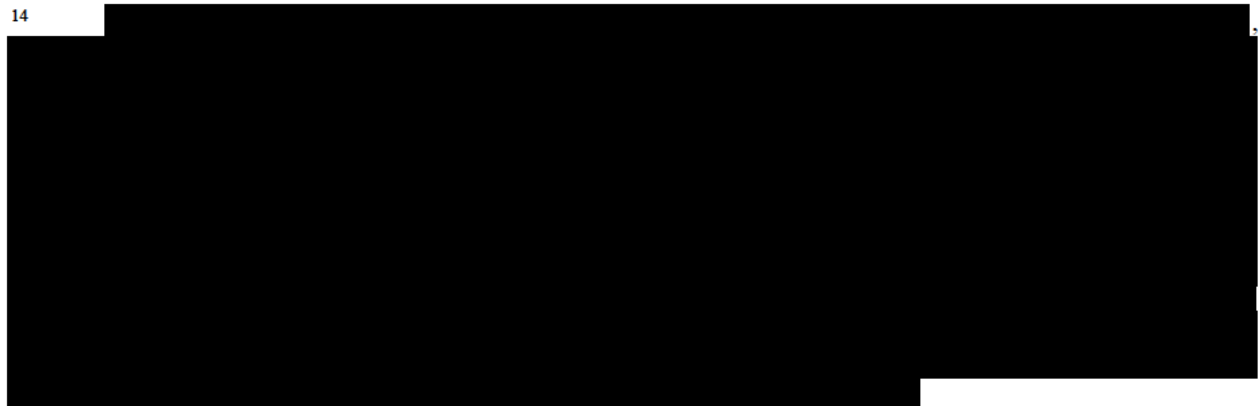
¹² These responsive records were designated by Rep. Perry as falling into subcategories A (201 records), D (86 records), E (128 records), F (68 records), G (1 record), J (101 records), K (11 records), L (32 records), and O (50 records). *See, supra*, in Part I.C.

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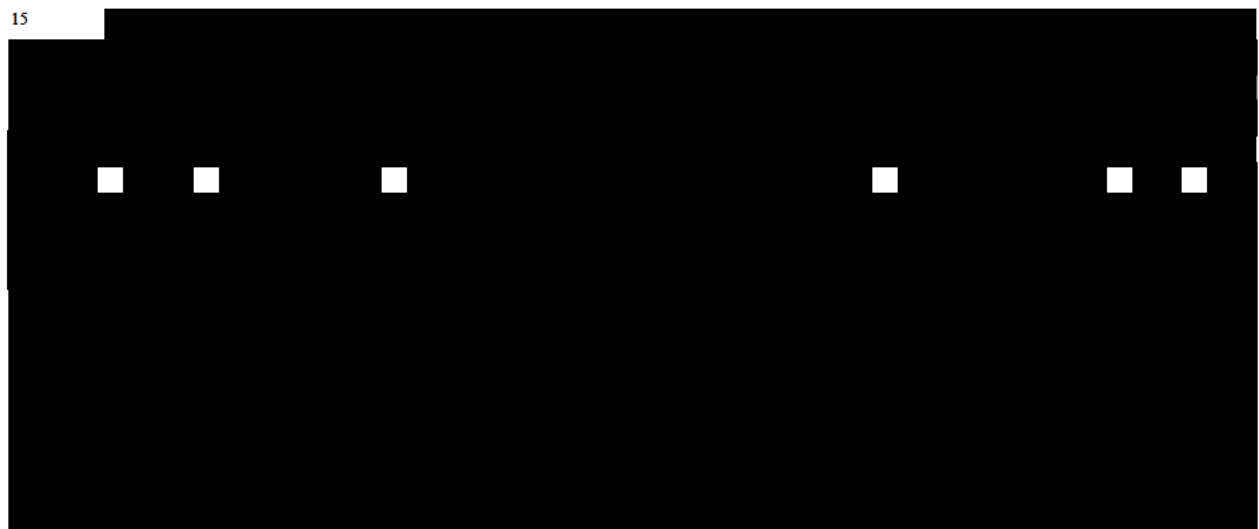


communications with “Trump Campaign officials,” like his communications with cybersecurity individuals, show that Rep. Perry received from and relayed to these officials information about instances of purported election fraud and misconduct, while also discussing ways in which the Trump Campaign could challenge the results of the 2020 election.¹⁴ Third, Rep. Perry’s communications with various Pennsylvania State legislators refer to purported electoral fraud in the 2020 election in Pennsylvania and efforts in that State to challenge and undo the results of that election.¹⁵ Fourth, the category of “Other” responsive records span an array of private individuals

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and cover a grab-bag of topics, from COVID-19 to voter fraud in the 2020 election and strategy advice relayed to or solicited by Rep. Perry in connection with coordinating with Executive Branch officials about the ECA process.¹⁶

In the broadest possible terms, Rep. Perry believes the Clause shields all these responsive records from investigative review because they are part of his informal fact-finding efforts to understand election security issues in the 2020 election since the ECA process “obligated Rep. Perry to vote on whether to confirm the electors and certify the 2020 election” and to determine “whether there were enough unlawful votes to question the outcome of the election.” Perry Mot. at 9–10. The Court is no position to assess the sources of information Rep. Perry chose to use, the significance of that information to him in how he chose to act, or whether the information he obtained or relayed amounted to verifiable facts. Such an assessment is both unnecessary and irrelevant to the pending legal issue. What is plain is that the Clause does not shield Rep. Perry’s random musings with private individuals touting an expertise in cybersecurity or political discussions with attorneys from a presidential campaign, or with state legislators concerning hearings before *them* about possible local election fraud or actions *they* could take to challenge

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election results in Pennsylvania, because those communications are just “casually or incidentally related to legislative affairs but not a part of the legislative process itself,” *Brewster*, 408 U.S. at 528, including the ECA process.

As the following examples reveal, the scattershot nature of Rep. Perry’s communications with these private individuals—regarding cybersecurity, *see supra* n.13, Trump Campaign staff, *see supra* n.14, or GOP strategists, *see supra* n.16—and Pennsylvania State legislators, *see supra* n.15, demonstrates that their overarching catch-as-catch-can purpose was to override the results of the 2020 election and only tangentially related to the ECA process. To begin with the purported cybersecurity experts, Rep. Perry claims that these communications were to investigate fraud in the 2020 election, in Pennsylvania and elsewhere, to inform his ECA vote. Perry Mot. at 10. This stated purpose is belied by the fact that a number of these communications relate to coordinating strategy and public relations efforts with Executive Branch officials or Trump Campaign officials, [REDACTED], regarding voting irregularities. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Likewise, examples of communications Rep. Perry had with others, including on the Trump Campaign staff and Pennsylvania State legislators, show his efforts to encourage action by others to address what he perceived to be election fraud, without being directly related to what he would do as a Member as part of a legislative process.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Absent firm ties to a regular and formal legislative process before the Congress, the content of these communications makes apparent that this conduct was merely “casually or incidentally related to legislative affairs,” *Brewster*, 408 U.S. at 528, such that the Clause does not apply. As the D.C. Circuit has explained, just because conduct is engaged in to “perform or aid in the performance of legislative acts,” does not cloak that conduct with privilege; instead, the Clause “encompasses the execution of legislation when the executing actions themselves constitute

legislative acts.” *McCarthy v. Pelosi*, 5 F.4th at 41 (quotation marks omitted). These communications with private individuals and with State legislators do not themselves qualify as legislative acts.

Rep. Perry’s communications relaying or seeking information were not congressionally authorized “by [a] particular subcommittee[.]” *McSurely*, 553 F.2d at 1287, let alone initiated or received “in a procedurally regular fashion[.]” *see Brown & Williamson*, 62 F.3d at 416, so his fact-finding efforts are untethered from any formal legislative activity. Disclosing these responsive records to the government thus would not “threaten the integrity or independence” of Congress because their disclosure would not risk “impermissibly exposing its deliberations to executive influence.” *Gravel*, 408 U.S. at 625. Nor were these communications part of, let alone integral to, any legislative process or the ECA process within the House of Representatives or Joint Session of Congress mandated by the U.S. Constitution and the ECA. No matter the vigor with which Rep. Perry pursued his wide-ranging interest in bolstering his belief that the results of the 2020 election were somehow incorrect—even in the face of his own reelection—his informal inquiries into the legitimacy of those election results are closer to the activities described as purely personal or political in *Brewster* since this “fact-finding” was conducted entirely outside the auspices of a formal congressional inquiry or authorization. *See* 408 U.S. at 512–13.

Indeed, the lack of formality surrounding these communications evinces that he initiated them for furthering the Trump Campaign’s efforts to sow doubt about the legitimacy of the 2020 election. Revelation of these communications to the investigative authorities would thus merely disclose communications that were, at most, just incidentally related to his ECA vote, so the Clause does not apply to them. *See Fields v. Office of Eddie Bernice Johnson*, 459 F.3d 1, 10 (D.C. Cir. 2006) (cleaned up) (emphasis in original) (“The Speech or Debate Clause does not prohibit inquiry

into illegal conduct simply because it has some *nexus* to legislative functions, or because it is merely related to, as opposed to part of, the due functioning of the legislative process.”). Accordingly, these responsive records are not entitled to Clause protection.

Rep. Perry makes two other arguments about why his fact-finding efforts are protected under the Clause, neither of which withstand scrutiny. First, Rep. Perry urges that his motives for initiating these fact-finding inquiries cannot be questioned because “there is an objectively legislative purpose for his actions.” Perry Suppl. (*ex parte*) at 23. For this argument, Rep. Perry relies on *Bogan v. Scott-Harris*, where the Supreme Court concluded that legislative immunity barred a First Amendment retaliation claim against local officials for eliminating the plaintiff’s position, allegedly as a result of her filing a complaint against an employee working under her supervision. 523 U.S. at 46–47, 55. His reliance on *Bogan* is misplaced since that case only highlights the fundamental flaw in Rep. Perry’s assertion of legislative privilege for his “fact-finding” activities: the utter lack of procedural regularity in his sprawling efforts. To be sure, in *Bogan*, the Supreme Court confirmed well-settled law that the standard for determining whether an act is legislative “turns on the nature of the act itself, rather than on the” legislators’ “motive or intent.” 523 U.S. at 54; *see also Rangel*, 785 F.3d at 24 (“[A] charge . . . that the Congressman’s conduct was improperly motivated . . . is precisely what the Speech or Debate Clause generally forecloses from . . . judicial inquiry.”) (quotation marks omitted and alterations in original). At the same time, even after “stripp[ing] [] all considerations of intent and motive,” the *Bogan* Court had “little trouble concluding that” the challenged local city council vice president and city mayor’s actions were “quintessentially legislative” because they involved “voting for an ordinance,” “introduction of a budget[,] and signing into law an ordinance,” all of which activities “were formally legislative . . . because they were integral steps in the legislative process[.]” 523

U.S. at 55. Thus, the local legislators’ were entitled to absolute legislative immunity from civil liability. *Id.* In stark contrast, Rep. Perry’s communications with private, non-federal government individuals across these 678 responsive records possess none of the “hallmarks of traditional” legislative activity—they were simply informal communications he engaged in for his own informational and political purposes. In short, no matter his motives for initiating or engaging in those communications, under *Bogan*, they were neither necessary nor integral any formal legislative or ECA procedure.

Relatedly, Rep. Perry defends his “fact-finding” efforts, saying that he “acted on information provided by sources that he considered to be credible” when soliciting and relaying information from individuals in these 678 responsive records and that “his actions must be considered in the context of the moment, rather than in perfect hindsight.” Perry Suppl. (*ex parte*) at 4. Just as Rep. Perry’s own motives and intent are irrelevant to the determination of whether the Clause applies, however, so too is the “credibility” of the individuals with whom he spoke, since the “[t]he key consideration . . . is the act presented for examination, not the actor.” *Walker*, 733 F.2d at 929. Here, Rep. Perry’s assertion that the purpose for his communications with private individuals, including Trump Campaign staff, and Pennsylvania State legislators, was to help him prepare for his ECA vote shows only a tangential nexus between those communications and any official action he took as a legislator in challenging elector certifications or casting a vote. Certainly, his actual use of the information he may have gained from these communications during any formal debate in either the Joint Session of Congress or separate House debate during the ECA process on the House floor is entitled to Clause protection. His individual and informal pursuit, gathering, and culling of information reflected in the 678 responsive records to inform his actions

on the House floor—without formal sanction by any regular procedure in the House—is, however, not privileged. *See McSurely*, 553 F.2d at 1287.

Second, Rep. Perry urges that his “actions here are not unlike those taken by Senator Lindsey Graham” in the wake of the 2020 election and are similarly protected by the Clause for the same reasons that Sen. Graham’s fact-finding efforts are protected. Perry Mot. at 7. Sen. Graham was indeed partially successful in quashing a subpoena issued by a special grand jury in the State of Georgia for testimony about conversations he had with the Georgia Secretary of State about instances of voter fraud in the 2020 election in that state. *See In re Graham*, No. 1:22-CV-03027-LMM, 2022 WL 13692834, at *8 (N.D. Ga. Sept. 1, 2022). In that case, the district court concluded that “Senator Graham may not be questioned about investigatory fact-finding that allegedly took place on the phone calls with Georgia election officials because such fact-finding constitutes protected legislative activity[,] . . . mean[ing] that Senator Graham [could not] be questioned as to any information-gathering questions he posed (or why he posed them) about Georgia’s then-existing election procedures or allegations of voter fraud.” *Id.* at *8.¹⁷ In reaching this conclusion, the court surveyed binding caselaw from the Supreme Court, most particularly in *Bogan* and *Eastland*, on the scope of the Clause’s protections, and it observed that the test for

¹⁷ On appeal, neither the Eleventh Circuit nor the Supreme Court opined on the merits of this conclusion and certainly did not adopt it; instead, both Courts merely pointed to the breadth of protection afforded to Senator Graham’s communications under the district court’s reading of the Clause and denied his requests for a stay of his required grand jury testimony since he could not establish that he was likely to succeed on his remaining claims of privilege. *See Fulton Cnty. Special Purpose Grand Jury v. Graham*, No. 22-12696-DD, 2022 WL 13682659, at *2 (11th Cir. Oct. 20, 2022) (“Senator Graham has failed to demonstrate that this approach will violate his rights under the Speech and Debate Clause. . . . [He] can [be] ask[ed] about non-investigatory conduct that falls within the subpoena’s scope, but . . . [s]hould there be a dispute over whether a given question about Senator Graham’s phone calls asks about investigatory conduct, the Senator may raise those issues at that time [with the district court]. . . . We thus find it unlikely that questions about them would violate the Speech and Debate Clause.”); *Graham v. Fulton Cnty. Special Purpose Grand Jury*, 143 S. Ct. 397, 398 (2022) (denying Sen. Graham’s stay and injunction pending appeal because “a stay or injunction is not necessary to safeguard the Senator’s Speech or Debate Clause immunity” since the “[t]he lower courts assumed that the informal investigative fact-finding that Senator Graham assertedly engaged in constitutes legislative activity protected by the Speech or Debate Clause”).

determining whether an activity is legislative “does not necessarily include a formality requirement and, as presently fashioned, it allows for flexibility of analysis depending on the circumstances of a given case.” *Id.* at *3. This conclusion relies on a troublesome reading of Supreme Court precedent and, in any event, runs contrary to binding caselaw in the D.C. Circuit, so it is unpersuasive.

Unlike the Eleventh Circuit, the D.C. Circuit has expressly found that a Member’s informal fact-finding efforts must be formally authorized by a Congressional body to constitute protected legislative activity. *McSurely*, 553 F.2d at 1287. In establishing this requirement, the *McSurely* Court relied heavily on the Supreme Court’s “recent decision in *Eastland v. United States Servicemen’s Fund*,” decided just one year before. *Id.* at 1286. In *Eastland*, the Supreme Court reasoned that a Subcommittee’s enforcement of a subpoena was protected legislative activity because the Subcommittee “was acting under an unambiguous resolution from the Senate[,]” so its inquiry could “fairly be deemed within [the Subcommittee’s] province.” 421 U.S. at 505–06 (quotation marks omitted) (alteration in original). Likewise, over twenty years later in *Bogan*, the Supreme Court found the Clause privilege applied to actions that were “quintessentially legislative[,]” involving “voting for an ordinance[,]” “introduction of a budget[,] and signing into law an ordinance.” *Bogan*, 523 U.S. at 55. The *McSurely* Court accordingly reasoned that, though the Clause privilege “extend[s] to field investigations by a Senator or his staff” to ensure “enough threshold information to know where” to target subpoenas and to acquire “knowledge through informal sources” necessary “to discharge their constitutional duties properly,” *id.* at 1286–87, an investigative endeavor qualifies for Clause protection only when the “requirement of congressional authorization of the inquiry by the particular subcommittee involved” is met, *id.* at 1287. None of Rep. Perry informal “fact-finding” efforts were sanctioned in any way by formal House or

committee authorization or otherwise part of the regular procedural process integral to the Electoral College vote certification process, under the Constitution or ECA. Rather, Rep. Perry’s informal “fact-finding” activities involving private individuals, including Trump Campaign staff, and State legislators was pursued by him as an individual Member. *McSurely* forecloses his claims of privilege.

Even were Rep. Perry’s argument not foreclosed by binding precedent in this Circuit, his theory of privilege—giving Clause protection to a Member’s informal fact-finding efforts untethered from a formal legislative inquiry—would be “both unwise in principle and unworkable in practice.” See *In re Grand Jury Subpoenas*, 571 F.3d at 1207 (Kavanaugh, J., concurring). This caution is amply demonstrated by the painstaking parsing the district court directed *In re Graham* as to the types of questions that Sen. Graham could or could not be asked to testify about concerning his communications with the Georgia Secretary of State, when “the very nature and substance of these calls has been a source of public debate and dispute among the calls’ participants.” 2022 WL 13692834, at *4; *id.* (noting that “there is a fundamental factual dispute as to the very nature and substance of the phone calls and what Senator Graham *actually stated and suggested* on the calls”) (emphasis in original); *id.* at *4, *8 (instructing that “asking broad questions of intent that could implicate some legitimate legislative activity (such as asking Senator Graham why he made the calls to Georgia election officials)” were barred under the Clause, as were “question[s] about investigatory fact-finding that allegedly took place on the phone calls with Georgia election officials,” but “to the extent [Sen. Graham] asked questions or made statements that went beyond mere inquiries into Georgia’s then-existing procedures (that is, to the extent Senator Graham suggested that Georgia election officials take certain actions or alter their procedures), those statements and questions may be the subject of inquiry before the grand jury

because they are not protected legislative activity”); *id.* at *4 (“Again, it is possible that the phone calls contained both legislative and non-legislative activity, and the Speech or Debate Clause protects only that which is legislative.”). The nuanced line-drawing articulated by the district court in the case of Senator Graham to distinguish appropriate from privileged inquiry of a Member of Congress called to testify before the grand jury about his informal fact-finding efforts is even more challenging when conducting an *in camera* document review because the full context of any given communication may not be discernible. This approach of affording Clause protection to such informal fact-finding efforts would assuredly “create considerable confusion” as to whether the Clause applies and invite inconsistent applications of the legislative privilege. *Cf. In re Grand Jury Subpoenas*, 571 F.3d at 1207 (Kavanaugh, J., concurring). *McSurely* intentionally avoided this parsing quagmire because the requirement of formal legislative authorization connects a Member’s informal investigative activities to a sanctioned legislative purpose, making clear whether the Clause applies or not.

For these reasons, all 678 responsive records in the four categories of “cybersecurity individuals,” “Trump Campaign officials,” “Pennsylvania State Legislators,” and “Other” individuals are not protected under the Clause and must be disclosed to the government.

2. Communications With Congressional Members and Staff

Rep. Perry’s 611 responsive records in Subcategory B—which contains communications exclusively with congressional Members and staff, *see, supra*, Part I.C.—run the gamut of topics, from matters related to the internal HFC elections to the ECA vote.¹⁸ While these communications

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are lumped by Rep. Perry into a single category, *see* Perry Mot. at 4–5, *in camera* review reveals that these responsive records may be grouped as follows: (a) communications with Members and staff about legislation and votes; (b) communications with Members and staff concerning committee assignments and HFC Board elections; (c) electronic newsletters from House Republican Conference leadership; (d) communications with staff concerning Rep. Perry’s own press coverage or media strategy; and (e) communications with Members concerning suspected election fraud in, and legal challenges to, the results of the 2020 presidential election.

The Clause protects Rep. Perry’s communications with legislative staff and other Members, so long as those records are “an integral part of the deliberative and communicative processes” of lawmaking. *Gravel*, 408 U.S. at 625; *see also Rayburn*, 497 F.3d at 661 (explaining that “exchanges between a Member of Congress and the Member’s staff or among Members of Congress on legislative matters” are protected by the Clause). Put another way, just because Rep. Perry is communicating with other Members and/or staff does not automatically trigger the Clause’s protections. Consequently, the Clause protects only the first two groups of responsive records and one type of electronic newsletter in the third group in this category.

(a) Communications With Members And Staff About Legislation And Votes

The responsive records containing communications Rep. Perry had with the following individuals on the topics described are protected by the Clause: (1) his legislative directors about his vote on the House floor or in a committee, [REDACTED]

[REDACTED]

[REDACTED] (2) other Members about pending legislation, *see, e.g.*, [REDACTED]

[REDACTED]

[REDACTED]); and (3) other Members about strategy and assignments during the ECA vote, *see*,

[REDACTED]

[REDACTED] Given that the Clause unequivocally protects “against inquiry into acts that occur in the regular course of the legislative process and into the motivation for those acts[.]” *Helstoski*, 442 U.S. at 489 (quotation marks omitted), and the “act of voting” itself, *Gravel*, 408 U.S. at 617, these communications with Members and staff that are integral to or part of a Member’s decision to cast a vote in favor or against and procedures on the House floor, including communications about how and when a Member should speak, are privileged.

(b) Communications With Members And Staff Concerning Committee Assignments And HFC Board Elections

Although not directly touching on pending legislation or related votes or procedural matters, the second group of responsive records involving communications between or among Members or staff about preferred committee assignments and votes for board membership in the HFC, are also protected by the Clause. These responsive records include Rep. Perry’s communications with the following : (1) House staff about the committees on which he would prefer to serve in the upcoming term, [REDACTED]; (2) Members about the committees on which they wished to serve, [REDACTED]

[REDACTED]; and (3) Members and staff about board elections for the HFC, [REDACTED]

Considering that the Clause protects a whole host of acts integral to congressional committee

operations, *see, e.g., Gravel*, 408 U.S. at 617 (reports and resolutions); *Eastland*, 421 U.S. at 507 (subpoenas); *Tenney*, 341 U.S. at 377–78 (witness testimony at hearings); *Consumers Union*, 515 F.2d at 1350–51 (executing or enforcing internal rules), communications related to the composition of the committees, including preferences for committee assignments and internal Member and staff deliberations about the same, are also protected. The same principles apply to Members’ internal deliberations about the board election for the HFC, even though this entity is not a formal House standing committee or subcommittee, since the HFC is a recognized caucus organized by House Members to promote and effect the legislative agenda. Accordingly, internal deliberations about HFC board elections fall within “the regular course of the legislative process[.]” *Helstoski*, 442 U.S. at 489 (quotation marks omitted).

(c) Electronic Newsletters From House Republican Conference Leadership

Rep. Perry received from the House Republican Conference a significant volume of electronic newsletters delivered via email. For the most part, these newsletters address the following topics: (1) the timing and location of conference meetings, [REDACTED]

[REDACTED] and (2) upcoming events, political talking points, news articles of interest, and events occurring in and around Congress, [REDACTED] [REDACTED]

These responsive records are not privileged for at least two reasons. First, the scheduled date and time for meetings or other events reveals only that meetings occurred or were anticipated to occur, without disclosing much, if anything, about the subject matter of what actually occurred

at the meetings, so they reveal nothing about internal deliberations related to legislative matters. *Cf. Brewster*, 408 U.S. at 502 (holding that if it is not “necessary to inquire into how [the Member] spoke, how he debated, how he voted, or anything he did in the chamber or in committee,” the act or activity is not privileged).

Second, internal newsletters discussing upcoming events, political talking points, news articles of interest, and events occurring in and around Congress are not protected because they are purely political and not integral to any formal legislative activity. In *Hutchinson*, the Supreme Court made clear that just because written materials are issued by congressional Members or staff does not qualify those materials automatically as privileged. 443 U.S. at 130. By contrast to a speech delivered by a Member on the Senate or House floor that would be protected under the Clause, newsletters and press releases are neither “essential to the deliberations of the Senate” nor “part of the deliberative process.” *Id.* (explaining that just as a Member “may not with impunity publish a libel from the speaker’s stand in his home district,” republishing a libelous statement outside of a formal committee report or floor statement “is not an essential part of the legislative process and is not part of that deliberative process ‘by which Members participate in committee and House proceedings’” (quoting *Gravel*, 408 U.S. at 625)). Although the electronic newsletters at issue here appear to be internal to House Republican Members—unlike the written materials at issue in *Hutchinson* that were intended for dissemination outside the Congress—the non-legislative matters covered in the contents of the instant electronic newsletters defeat any privilege claim. ■

[REDACTED]

[REDACTED]. These communications come nowhere close to discussing a Member's participation in "the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House[.]" *Gravel*, 408 U.S. at 625, so they are not privileged under the Clause.

One internal electronic newsletter, called [REDACTED]," sent frequently via email to Rep. Perry by the House Republican Leadership Conference, provided substantive summaries and discussion of pending legislation and other legislative business before the House and individual committees. [REDACTED]

[REDACTED]

[REDACTED] While for the reasons already stated above, general political newsletters issued by Members and staff are normally not privileged, internal newsletters like [REDACTED]" are different by providing substantive analysis, even if superficial and abbreviated, to inform Members about a critical legislative activity in which Members engage: voting. *See Walker*, 733 F.2d at 929 (explaining that "voting" is "integral to lawmaking"). In effect, this substantive internal newsletter amounts to a modern mechanism to share significant information among Members about pending legislative matters requiring a Member's attention and vote, meaning they contribute directly to, and are "part and parcel of[.] the legislative process." *See Gravel*, 408 U.S. at 626. Thus, the responsive records consisting of "[REDACTED] electronic newsletter are protected by the Clause.

(d) Communications With Staff Concerning Rep. Perry's Own Press Coverage Or Media Strategy

Responsive records consisting of communications regarding Rep. Perry's own press coverage or media strategy are not protected by the Clause because these activities are plainly political under *Brewster* and *Hutchinson*. [REDACTED] ([REDACTED])

[REDACTED]

[REDACTED]

[REDACTED]); [REDACTED]

[REDACTED]);

[REDACTED]

[REDACTED]). If disseminating

newsletters and press releases, as in *Hutchinson*, is not "essential to the deliberations" of Congress nor "part of the deliberative process," 443 U.S. at 130 (quotation marks omitted), Rep. Perry's communications about such public-facing activities as securing endorsements or political messaging to the public are not part of the legislative process either. Nor does the fact that these communications are with his staff save Rep. Perry's claim of privilege here because "[t]he key consideration . . . is the act presented for examination, *not the actor*." *Walker*, 733 F.2d at 929 (emphasis added). Here, the acts in question are political communications, not legislative.

(e) Communications With Members Concerning Election Fraud In The 2020 Election And Legal Challenges To Results Of That Election

Rep. Perry's communications with Members and staff about alleged election fraud and security concerns in the 2020 election as well as legal efforts to challenge the results of that election are not privileged because they are purely political rather than legislative in character. Examples of these conversations include Rep. Perry and other Members (1) discussing alleged evidence of voting fraud in the 2020 election, [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]; [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]; and (2) communicating about planned actions to challenge the election results, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED];

[REDACTED]

[REDACTED]).

These responsive records are textbook political conversations not protected by the Clause. As already noted, merely because these responsive records reflect communications with other Members does not automatically qualify them for protection under the Clause. Most significantly, these communications are not integral to activities “generally done in a session of the House [or Senate] by one of its members in relation to the business before it.” *Brewster*, 408 U.S. at 510 (quotation marks omitted). Instead, these communications reflect Rep. Perry’s (and other Members’) dismay about former President Trump’s electoral defeat in 2020, and actions that he and other Members could take as individuals—outside of the formal operations of Congress—to

challenge that result. At best, these communications were merely incidental to Rep. Perry's ECA vote, and as such are "beyond the legitimate legislative needs of Congress" and "fall[] outside of legislative immunity." *McSurely*, 553 F.2d at 1285–86 (quotation marks omitted).¹⁹

In sum, 164 of Rep. Perry's 611 communications with other Members and staff contain privileged information.²⁰ Specifically, only Rep. Perry's responsive records with Members and staff that directly concern legislative activities—*i.e.*, his conversations with Members and/or staff about votes, strategy in preparation for votes, committee assignments, and HFC Board elections, and internal, electronic newsletters he received discussing votes or legislation—are privileged under the Clause because they involve communications integral to the legislative process. The remainder of his communications with Members and/or staff—*i.e.*, his conversations about press coverage and political messaging, his communications about fraud and security concerns in the 2020 election, and general newsletters he received from House GOP leadership—are political in

¹⁹ For the same reason, responsive records consisting of purely political communications amongst Rep. Perry and his staff must be fully disclosed to the government. [REDACTED]

Such communications generally reflecting Rep. Perry and/or his staff member's personal views of House leadership do not relate directly to legislative matters, but are, at best, only tangential to core legislative activity, so they are not protected.

²⁰ Three responsive records are communications between Rep. Perry and his legislative director, [REDACTED] k [REDACTED] that contain both privileged and non-privileged information, and therefore privileged portions regarding legislative activity may be withheld, with redactions, and the remaining non-privileged responsive portions of these three records may be disclosed to the government. [REDACTED]

nature rather an integral part of the legislative process, so they must be disclosed to the government.

3. Communications With Executive Branch Officials

Rep. Perry's final category of responsive records consists of 930 responsive records containing communications with Executive Branch officials that focus principally on claims of election fraud in the 2020 presidential election and strategies to keep former President Trump in office.²¹ Conceding "the fact that Rep. Perry was communicating with executive branch officials . . . is not determinative of the applicability of the Speech or Debate Clause," Perry Mot. at 10–11, Rep. Perry nonetheless asserts these communications are protected because, like his communications with private individuals, including Trump Campaign staff, and State legislative officials, he engaged in these communications "for the purpose of obtaining information that might further Rep. Perry's legislative responsibilities and purpose[.]" *id.* at 11.²²

²¹ [REDACTED]

²² [REDACTED]

Rep. Perry is wrong. None of these communications are protected by the Clause. First and foremost, the entire premise of Rep. Perry's claim for privilege over these communications would turn the Clause's foundational purpose on its head. That purpose is straight-forward and simple: to "preserve the constitutional structure of separate, coequal, and independent branches of government . . . [by preventing] intrusion by the Executive and the Judiciary into the sphere of protected legislative activities." *Helstoski*, 442 U.S. at 491; *see also id.* (quotation marks omitted) ("[T]he privilege was [] born primarily of a desire . . . to prevent intimidation by the executive and accountability before a possibly hostile judiciary."). Rep. Perry's communications with Executive Branch officials, as reflected in the responsive records, demonstrate that he welcomed, rather than resisted, and indeed often initiated these communications to relay information or urge consideration of a strategy by the White House or specific action to be taken by the White House, the Trump Campaign, or DOJ. His efforts to engage with Executive Branch officials about election fraud and procedural mechanisms, including during the ECA process, to overturn the election result were proactive, persistent, and protracted. Given the Clause's purpose to protect congressional Members from untoward interference from the Executive Branch with legislative matters, Rep. Perry's reliance on the Clause to shield his multi-pronged push for Executive Branch officials to take more aggressive action is not only ironic but also must fail as beyond the scope of the Clause.

The Supreme Court recognized this significant limit on the Clause's scope in *Gravel*, observing that "Members of Congress are constantly in touch with the Executive Branch of the

Government and with administrative agencies—they may cajole, and exhort with respect to the administration of a federal statute—but such conduct, though generally done, is not protected legislative activity.” 408 U.S. at 625. Indeed, Rep. Perry’s communications [REDACTED] about coordinating efforts to gather information about the 2020 election in Pennsylvania cannot fairly be characterized as pure “fact-gathering activities” to determine the validity of the 2020 election in Pennsylvania and other states, as he suggests in his motion. *See Perry Mot.* at 9–10. Instead, these communications show that Rep. Perry was furnishing [REDACTED] with purported evidence of voting fraud—as opposed to seeking that information for his own fact-finding efforts—so that [REDACTED], and presumably others in the Executive Branch, could take action to challenge the 2020 election results. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] If Rep. Perry was purely gathering information, he would not have been “attempt[ing] to influence the conduct of executive” branch officials and encouraging them to engage in efforts to challenge the legitimacy of the 2020 election. *See Hutchinson*, 443 U.S. at 122 n.10. Set against the backdrop of the Supreme Court’s firm statement in *Gravel* that a

Member's communications with the Executive Branch are political and not legislative, Rep. Perry's communications with these officials are plainly not protected by the Clause.

For the above reasons, Rep. Perry's assertion of privilege over his 930 communications with Executive Branch officials cannot be sustained and these responsive records must be disclosed to the government.

III. CONCLUSION

For the reasons stated above, Rep. Perry's Motion, ECF No. 21, is **GRANTED IN PART AND DENIED IN PART**. Accordingly, Rep. Perry must disclose to the government the vast majority of the 2,219 responsive records, with attachments, from Rep. Perry's cell phone submitted for review to the Court, with only 164 records requiring redaction or withholding on the basis of privilege under the Speech or Debate Clause.

Date: December 28, 2022

BERYL A. HOWELL
Chief Judge

EXHIBIT 2

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

IN THE MATTER OF THE SEARCH OF
THE FORENSIC COPY OF THE CELL
PHONE OF REPRESENTATIVE SCOTT
PERRY

Case No. 22-sc-2144 (BAH)

Chief Judge Beryl A. Howell

UNDER SEAL

MEMORANDUM OPINION AND ORDER

Representative Scott Perry (“Rep. Perry”) seeks to stay the disclosure of 2,055 records on his personal cell phone to the government, pending his appeal of this Court’s Order and Memorandum Opinion, both issued on December 28, 2022 (“Dec. 2022 Order” and “Dec. 2022 Decision,” respectively), ECF Nos. 24 and 25. *See* Rep. Perry’s Emergency Mot. to Stay (“Perry Mot.”), ECF No. 27; *see also* Rep. Perry’s Mem. re Emergency Mot. to Stay (“Perry Mem.”), ECF No. 27-1. The December 2022 Order permitted Rep. Perry to withhold from the government 161 records in whole and three records in part that he claimed were privileged under the Speech or Debate Clause (“Clause”), while rejecting Rep. Perry’s claims of privilege with respect to 2,055 additional records that he does not dispute are responsive to a search warrant issued by this Court (“D.D.C. Warrant”). *See generally* Dec. 2022 Order. Upon review, Rep. Perry does not meet the high bar for the extraordinary relief that a stay confers. His motion is thus denied.¹

¹ In the alternative, Rep. Perry requests the issuance of “a temporary stay” of the December 2022 Order “to allow the D.C. Circuit an opportunity to consider his appeal . . . by extend[ing] the date [] he is directed to provide documents to the Government . . . to Friday, January 6, 2023.” Perry Reply at 9. His alternative request for a temporary stay of the December 2022 Order by an additional day is granted solely to allow Rep. Perry to file his emergency motion with the D.C. Circuit.

I. BACKGROUND

A detailed description of the factual and procedural history preceding this motion is set out in the December 2022 Decision, at 4–10, and is thus incorporated by reference here.

Specific to this motion, on December 28, 2022, the Court granted in part and denied in part Rep. Perry’s motion for non-disclosure, holding that 2,055 of the 2,219 responsive records withheld by Rep. Perry are not privileged under the Clause, while 161 records were properly withheld in full and three records in part. *See* Dec. 2022 Order; Dec. 2022 Decision. The December 2022 Order disclosed redacted versions of the three partially privileged records and required Rep. Perry to disclose the remaining 2,055 responsive records not covered by the Clause to the government by January 5, 2023. Dec. 2022 Order at 1.

Rep. Perry then filed the instant motion for stay pending appeal on December 30, 2022, *see* Perry Mot, and an accompanying notice of appeal, *see* Rep. Perry’s Notice of Appeal, ECF No. 26. Notably, though this matter relates to an ongoing grand jury investigation, Rep. Perry’s notice of appeal does not ask for expedited consideration by the D.C. Circuit, under D.C. Cir. R. 2 and 27(f). Pursuant to an expedited briefing schedule entered by this Court, the government responded to Rep. Perry’s motion on January 3, 2022, *see* Gov’t’s Opp’n to Mot. for Stay Pending Appeal (“Gov’t’s Opp’n”), ECF No. 29, and Rep. Perry filed a reply by January 4, 2022, *see* Rep. Perry’s Reply re Emergency Mot. to Stay (“Perry Reply”), ECF No. 30. *See also* Scheduling Order (Dec. 31, 2022). Briefing on this pending motion is complete and thus the motion is now ripe for resolution.

II. LEGAL STANDARD

“The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). “A stay is not a matter of

right, even if irreparable injury might otherwise result,”” *Nken v. Holder*, 556 U.S. 418, 433 (2009) (quoting *Virginian Ry. Co. v. United States*, 272 U.S. 658, 672 (1926)), and “[a] stay pending appeal is always an extraordinary remedy,” *Bhd. of Ry. & S.S. Clerks, Freight Handlers, Express & Station Emps. v. Nat’l Mediation Bd.*, 374 F.2d 269, 275 (D.C. Cir. 1966); *see also Citizens for Responsibility & Ethics in Washington v. Fed. Election Comm’n*, 904 F.3d 1014, 1017 (D.C. Cir. 2018) (per curiam) (“CREW”) (describing a stay pending appeal as “extraordinary relief”).

Courts considering a stay request pending an appeal must “weigh competing interests,”” *Belize Soc. Dev. Ltd. v. Gov’t of Belize*, 668 F.3d 724, 732 (D.C. Cir. 2012) (quoting *Landis*, 299 U.S. at 254–55), by balancing the following factors as applied to the specific facts of the case: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies,” *Nken*, 556 U.S. at 434 (quotation marks omitted). The first and second factors are the “most critical” to determining whether a stay is warranted, *CREW*, 904 F.3d at 1017 (quoting *Nken*, 556 U.S. at 434), while the third and fourth factors “merge” when the stay applicant so moves against the government. *Nken*, 556 U.S. at 435. The party seeking the stay bears the burden of “mak[ing] out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to some one else.” *Landis*, 299 U.S. at 255.

III. DISCUSSION

Rep. Perry’s motion is denied because all four of the stringent *Nken* factors weigh against granting a stay. First and foremost, Rep. Perry is unlikely to succeed on the merits for the reasons

fully explicated in the December 2022 Decision.² The vast majority of the records at issue—which records were recovered, pursuant to a search warrant issued by the U.S. District Court for the Middle District of Pennsylvania, from Rep. Perry’s personal cell phone and are indisputably responsive to the D.D.C. Warrant—are not entitled to Clause protection because they do not contain communications “that are ‘integral’ to [his] participation in ‘the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House.’” Dec. 2022 Decision at 17 (quoting *Gravel v. United States*, 408 U.S. 606, 625 (1972)). Rep. Perry counters that these responsive records are protected “[l]egislative information gathering” efforts under the Clause because they contain his communications seeking “information about the security of the 2020 election and the validity of the electors required to certify the election, a vote that he was called upon to cast under the United States Constitution, and the Electoral Count Act.” Perry Mem. at 8.

To be sure, the December 2022 Decision recognized that Rep. Perry’s legislative activities integral to his consideration and vote under the Electoral Count Act of 1887 (“ECA”), 24 Stat. 373, 3 U.S.C. §§ 5, 6, and 15, as well as his communications relating directly to legislative activities, such as casting votes or speaking on the House floor, organizing and participating in legislative committees or in caucus, are protected under the Clause. Dec. 2022 Decision at 26–27 (communications integral to the ECA process are privileged under the Clause); *id.* at 40–41 (communications with Members and staff about legislation and votes are privileged under the Clause); *id.* at 41–42 (communications with Members and staff concerning committee assignments

² The government argues that the first *Nken* factor of likelihood of success on the merits cannot be met because the December 2022 Order was not a final decision on the merits, and, therefore, Rep. Perry is not entitled to bring an appeal challenging the denial of his assertion of the Clause since no exception under the collateral order doctrine permitting interlocutory review applies. Gov’t’s Opp’n at 6–11. Rep. Perry disagrees. Rep. Perry Reply at 1–4 (arguing that the Dec. 2022 Order is appealable under the collateral order doctrine). Regardless of whether the December 2022 Order is appealable, none of the *Nken* factors militate in favor of a stay and, consequently, the merits of the dispute over the appealability of the December 2022 Order need not be reached.

and House Freedom Caucus Board Elections are privileged under the Clause); *id.* at 44 (internal electronic newsletters sent by the House Republican Leadership Conference called [REDACTED] [REDACTED]” that provided substantive summaries and discussion of pending legislation and other legislative business are privileged under the Clause). The December 2022 Decision, however, explained at length why Rep. Perry’s “efforts as an individual Member either to obtain or relay information from or to others to be used to defeat or delay certification of the ECA vote and President-elect Joseph R. Biden’s victory in the 2020 election,” Dec. 2022 Decision at 27, were not protected under the Clause, and why his characterization of these efforts as “informal fact-finding” activities fell short of pulling the Clause’s cloak of protection over those communications, under a straight-forward reading of binding Supreme Court and D.C. Circuit precedent, which require for proper invocation of the Clause that an “investigative step is fully and unambiguously authorized for a legislative purpose,” *id.* at 21-22 (citing, *e.g.*, *Eastland v. U.S. Servicemen’s Fund*, 421 U.S. 491, 506 (1975) and *Brown & Williamson Tobacco Corp. v. Williams*, 62 F.3d 408, 416 (D.C. Cir. 1995)).

Consistent with this precedent, under *McSurely v. McClellan*, 553 F.2d 1277, 1286 (D.C. Cir. 1976) (en banc), to qualify for protection under the Clause, a Member’s fact-finding efforts must be performed in a sufficiently procedurally regular manner, with formal congressional sanction or authorization, to constitute legitimate legislative activity. *See* Dec. 2022 Decision at 32–38; *see also id.* at 22 (explaining *McSurely*’s requirement that an informal investigation be congressionally authorized). To the extent that Rep. Perry believes that *McSurely* created no requirement that a Member’s informal field investigations must be congressionally authorized, *see* Perry Mem. at 7–8, he is wrong for the reasons outlined in the December 2022 Decision.

None of the 2,055 responsive records that Rep. Perry has withheld as privileged contain communications relating to legislative-fact-finding efforts sanctioned or otherwise authorized in a

procedurally regular manner by any congressional entity. Rather, in large part, the communications illustrate efforts by Rep. Perry, members of former President Trump’s White House, his campaign team, and other allies to undermine the results of the 2020 election. In short, Rep. Perry provides no reason why these communications reflect anything more than activities that are “casually or incidentally related to legislative affairs but not a part of the legislative process itself.” *United States v. Brewster*, 408 U.S. 501, 528 (1972).

Rep. Perry also fails to grapple with the line-drawing problem of distinguishing between privileged and non-privileged communications that his theory of legislative privilege would create. In discussing the congressional authorization requirement, the December 2022 Decision explained how applying Rep. Perry’s theory of Clause privilege to “informal fact-finding efforts untethered from a formal legislative inquiry” would be “both unwise in principle and unworkable in practice[.]” “assuredly ‘create considerable confusion’ as to whether the Clause applies[,] and invite inconsistent applications of the legislative privilege[,]” particularly considering, in the context of an *in camera* document review, “the full context of any given communication may not be discernible.” Dec. 2022 Decision at 38–39 (quoting *In re Grand Jury Subpoenas*, 571 F.3d 1200, 1207 (D.C. Cir. 2009) (Kavanaugh, J., concurring)). Rep. Perry ignores this issue and the December 2022 Decision’s analysis of this problem, which further undermines his contention that he will likely succeed on the merits on appeal.

Rep. Perry’s focus on protection of his informal fact-finding efforts also elides the fact that a significant number of responsive records are communications that could not plausibly be related to fact-finding activities. For example, as explained in the December 2022 Decision, his communications with purported cybersecurity experts involved “coordinating strategy and public relations efforts with Executive Branch officials or Trump Campaign officials, [REDACTED] [REDACTED] regarding voting irregularities.” Dec. 2022 Decision at 31–32. These

communications largely reflect his efforts to relay information to other persons rather than trying to obtain, understand, or assess information. With respect to his communications with Members and staff, Rep. Perry received electronic newsletters from House Republican Conference Leadership discussing political talking points and events occurring in and around Congress, communications with staff concerning press coverage and media strategy, and communications with Members concerning possible actions to challenge the 2020 election results, *see id.* at 42–47. None of these communications appear to be remotely linked to fact-finding efforts, contrary to Rep. Perry’s general description. Finally, the December 2022 Decision explained that the majority of communications that Rep. Perry received from Executive Branch officials “demonstrate that he welcomed, rather than resisted, and indeed often initiated these communications to relay information or urge consideration of a strategy by the White House or specific action to be taken by the White House, the Trump Campaign, or [the Department of Justice].” *Id.* at 49. “Given the Clause’s purpose to protect congressional Members from untoward interference from the Executive Branch with legislative matters,” the Court held that “Rep. Perry’s reliance on the Clause to shield his multi-pronged push for Executive Branch officials to take more aggressive action is not only ironic but also must fail as beyond the scope of the Clause.” *Id.* Rep. Perry does not even attempt to explain how the Clause likely applies to these records in his motion, so he cannot satisfy the first *Nken* factor.

Next up is irreparable injury, which militates strongly against granting a stay. Although Rep. Perry is technically right that once the 2,055 responsive records are disclosed to the government, they cannot be undisclosed to the government, *see Perry Mem.* at 10, his argument that his constitutional rights would be violated by disclosing the records misses the mark because he still maintains the core protections available under the Clause. Specifically, Rep. Perry would retain criminal immunity for his legislative acts, the right to object to the use as evidence of his

legislative acts, and the right to avoid being compelled to testify about his legislative acts. *Howard v. Off. of Chief Admin. Officer of U.S. House of Representatives*, 720 F.3d 939, 946 (D.C. Cir. 2013); *see also* Dec. 2022 Decision at 14–16. Nonetheless, Rep. Perry counters that the December 2022 Order and Decision “imperil[] [his] ability to object to the use of the material by the Government and his privilege against compelled testimony.” Perry Reply at 5. This is inaccurate. The December 2022 Order was limited to the issue of non-disclosure, *see* Dec. 2022 Order at 1 (ordering Rep. Perry to disclose 2,055 responsive records in whole or in part to the government), leaving Rep. Perry free, at a minimum, to assert the Clause’s privileges in the future if the government uses any of the 2,055 records against him in a criminal prosecution or tries to compel him to testify about his communications contained in these responsive records.

The potential injury that Rep. Perry may face by denial of a stay pending appeal, arising from disclosure to the government of the withheld responsive records, is accordingly far less damaging than the harm he would face if the protections outlined in the Supreme Court’s Clause jurisprudence—protection from criminal and civil liability, testimonial privilege and nonevidentiary use privilege—were violated. *See In re Grand Jury Investigation*, 587 F.2d 589, 597 (3d Cir. 1978) (“But to the extent that the Speech or Debate Clause creates a Testimonial privilege as well as a Use immunity, it does so only for the purpose of protecting the legislator and those intimately associated with him in the legislative process from the harassment of hostile questioning. It is not designed to encourage confidences by maintaining secrecy, for the legislative process in a democracy has only a limited toleration for secrecy.”); *United States v. Renzi*, 651 F.3d 1012, 1020 (9th Cir. 2011) (rejecting the contention “that there exists some grandiose, yet apparently shy, privilege of non-disclosure that the Supreme Court has not thought fit to recognize”). Given that Rep. Perry retains these critical protections under the Clause, his claim that he will be irreparably injured absent a stay is overblown.

Additionally, should the D.C. Circuit find, on appeal, that any or all of the 2,055 responsive records are in fact privileged under the Clause, the government points out that a partial remedy could be issued “by ordering the Government to destroy or return any and all copies [of the records] it may have in its possession.” Gov’t’s Opp’n at 14 (quoting *Church of Scientology of California v. United States*, 506 U.S. 9, 12–13 (1992)). In any event, significantly undercutting Rep. Perry’s claim of irreparable injury is his concession that the government has already obtained or certainly could access “most if not all, of the communications at issue here by other means.” Perry Mem. at 11. Indeed, most of the 2,055 withheld responsive records that this Court has ordered disclosed are communications between Rep. Perry and other individuals, most of whom are not fellow congressional Members or staff. Assuming Rep. Perry is correct about the government already obtaining these same communications as part of the ongoing investigation from the individuals with whom Rep. Perry was communicating, requiring disclosure here will cause no harm to Rep. Perry at all since they are already in the government’s possession. In short, Rep. Perry cannot demonstrate that an injury would be “certain and great,” such that the second *Nken* factor weighs against granting a stay. *See Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985).³

Finally, the interests of the government and the public weigh against a stay. Just as the grand jury is required to look “into all information that might possibly bear on its investigation until it has identified an offense or has satisfied itself that none has occurred[.]” *United States v.*

³ In reply, Rep. Perry says that he would face harm by disclosing the responsive records at issue because such disclosure “would provide the Government with information that it could use and make derivative use of in its consideration of filing criminal charges in a highly charged political environment.” Perry Reply at 5. Rep. Perry’s argument is flawed for two reasons. First, Rep. Perry retains civil and criminal immunity, a testimonial privilege, and a nonevidentiary use privilege for his legislative acts, so the government’s use of any privileged records against Rep. Perry in a criminal prosecution would be prohibited under the Clause. Dec. 2022 Decision at 14–16. Second, the D.C. Circuit, in *United States v. Rayburn House Off. Bldg.*, 497 F.3d 654 (D.C. Cir. 2007) (“*Rayburn*”), never held that derivative use of a legislative record is privileged under the Clause but described the harm as limited to the “chill” that compelled disclosure of legislative records would cause. *See id.* at 661 (“This compelled disclosure clearly tends to disrupt the legislative process: exchanges between a Member of Congress and the Member’s staff or among Members of Congress on legislative matters may legitimately involve frank or embarrassing statements; the possibility of compelled disclosure may therefore chill the exchange of views with respect to legislative activity.”). Any derivative use of Rep. Perry’s privileged records is, thus, not a harm that the Clause contemplates or recognizes.

R. Enterprises, Inc., 498 U.S. 292, 297 (1991), and has a substantial interest in avoiding “delays and detours” that “would assuredly impede its investigation and frustrate the public’s interest in the fair and expeditious administration of the criminal laws,” *id.* at 298–99 (quotation marks omitted), the government also has a significant interest in moving forward expeditiously with the criminal investigation into those potentially involved in alleged criminal efforts to overturn the 2020 election. Rep. Perry has diligently pursued his claims of legislative privilege, with the concomitant result that over four months after issuance of the D.D.C. Warrant, the government has yet to review a significant number of responsive records. A prolonged appeal would only further delay disclosure of those responsive records. The government and the public have a strong interest in reviewing expeditiously the records responsive to the search warrant since “in criminal cases[,] encouragement of delay is fatal to the vindication of the criminal law.” *Khadr v. United States*, 529 F.3d 1112, 1117 (D.C. Cir. 2008) (cleaned up).⁴

None of Rep. Perry’s alternative considerations outweigh the government and the public’s interest in an expedient investigation. For starters, pointing to the fact that the government has obtained 12,944 records from his cell phone and communications from others, [REDACTED] Perry Mem. at 11, is a misfire. Even assuming he is correct about the government’s access to others’ records, this neither defeats nor deflects the government’s interest in responsive records held on Rep. Perry’s cell phone. Instead, as already noted, to the extent that the 2,055 responsive records at issue overlap with communications already in the government’s position, Rep. Perry only undermines his argument that he would be irreparably injured if a stay were not entered. Next,

⁴ Rep. Perry’s reliance on *Jewish War Veterans of U.S., Inc. v. Gates*, 522 F. Supp. 2d 73 (D.D.C. 2007), Perry Mem. at 12, is misplaced. In that case, a partial stay in production of potentially privileged records under the Clause was granted because “the Court conclude[d] that the Members have raised a serious legal question on appeal,” *id.* at 80, but no such persuasive argument is made here. Moreover, since that case involved a civil dispute, the court had no necessity to consider the weighty public interest of impeding a significant criminal investigation. *Id.* at 82–83.

Rep. Perry contends that “[h]is constituents also have an interest in ensuring that he is able on their behalf to investigate facts that are central to his legislative activity without fear of reprisal.” *Id.* at 12. Nothing about the December 2022 Order, however, prevents Rep. Perry from engaging in legislative fact-finding inquiries; it solely requires him to disclose records that are not privileged under the Clause. Also unavailing is his argument that he must be afforded time to solicit amicus participation, through the General Counsel of the House of Representatives, after Congress meets and “the new Speaker is elected.” Perry Mem. at 12–13. During all the months this case has been pending, however, Rep. Perry has thus far failed to “request that the Court grant access to the sealed proceedings in this case so that the General Counsel of the House of Representatives may directly represent Congress’ institutional prerogatives.” *Id.*; *cf. Gomez v. United States Dist. Court for Northern Dist. of Cal.*, 503 U.S. 653, 654 (1992) (per curiam) (noting that the “last-minute nature of an application” or an applicant’s “attempt at manipulation” of the judicial process may be grounds for denial of a stay). Any further delay in allowing the government’s investigation to proceed only weighs against a stay.

Ultimately, Rep. Perry concedes that the December 2022 Decision was “thorough and detailed[,]” and he simply “disagrees with the Court’s legal conclusions[.]” Perry Reply at 6. Having considered these disagreements again, this Court is not persuaded that his claims of legislative privilege were incorrectly evaluated in the December 2022 Decision, that he would be irreparably injured absent a stay pending appeal, and that the public interest favors granting the requested stay pending appeal.

Based on the foregoing analysis, Rep. Perry’s motion to stay the December 2022 Order and Decision pending appeal is denied.

IV. ORDER

For the foregoing reasons, it is hereby

ORDERED that Rep. Perry's Emergency Motion to Stay, ECF No. 27, is **DENIED**; it is further

ORDERED that the December 2022 Order be **TEMPORARILY STAYED** until January 6, 2023, at 5:00 PM, to allow Rep. Perry the opportunity to file an Emergency Motion to Stay with the United States Court of Appeals for the District of Columbia Circuit; it is further

ORDERED that Rep. Perry comply with the December 2022 Order by no later than January 6, 2023, at 5:00 PM.

SO ORDERED.

Date: January 4, 2023



A handwritten signature in cursive script, reading "Beryl A. Howell", is written over a horizontal line.

BERYL A. HOWELL
Chief Judge